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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

*Legislature*

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SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 28, 1987

1:40 P.M.



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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

STATE CAPITOL

ROOM 113

SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 28, 1987

1:40 P.M.

Reported by:

Evelyn Mizak  
Shorthand Reporter





APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

ADELBERT A. PIERCE, Director  
Department of Motor Vehicles

MICHAEL SALERNO  
Deputy Legislative Counsel

MICHAEL VADER, Chief Deputy Director  
Department of Fair Employment and Housing

MICHAEL KELLY, Deputy Director  
Department of General Services

WILLIAM GARCIA, Headquarters Operations Manager  
Department of Veterans Affairs

BEA MOLINA, Chairperson  
MAPA

MARK GUERRA, Director  
Department of Fair Employment and Housing





I N D E X

	<u>Page</u>
1	
2	
3	Proceedings 1
4	Opening Statement by CHAIRMAN ROBERTI 1
5	Authority for Hearing 1
6	Roll Call of Members 2
7	Limited Scope of Hearing 3
8	<u>Governor's Appointees:</u>
9	ADELBERT A. PIERCE, Director
10	Department of Motor Vehicles 3
11	Questions by CHAIRMAN ROBERTI re:
12	Machine Gun Statement 4
13	Names of Verifying Witnesses 4
14	<u>Sworn Witnesses:</u>
15	MICHAEL VADER, Chief Deputy Director
16	Department of Fair Employment and Housing 5
17	Questions by CHAIRMAN ROBERTI re:
18	Pierce's Alleged Comment 5
19	Discussion with BETTY READER 6
20	Presence at December, '83 Meeting 6
21	MICHAEL KELLY, Deputy Director
22	Department of General Services
23	Questions by CHAIRMAN ROBERTI re:
24	December, '83 Meeting in Pierce's Office 7
25	Pierce's Alleged Comment 7
26	Affidavit of SHIRLEY R. CHILTON 8
27	WILLIAM GARCIA, Headquarters Operations Manager
28	Department of Veterans Affairs 9
	Questions by CHAIRMAN ROBERTI re:
	December, '83 Meeting in Pierce's Office 10
	Location of Meeting 10
	Persons Present at Meeting 10
	Pierce's Alleged Comment 10
	Description of Meeting 11
	Protest to Agency 12
	Other Witnesses to Alleged Comment 12

I N D E X (Continued)

	<u>Page</u>
Question by SENATOR CRAVEN re:	
Date GUERRA Spoke to Newspapers	13
Questions by CHAIRMAN ROBERTI re:	
Purported Threats to Hispanic Groups	13
Identity of Intimidator	14
BEA MOLINA, Chairwoman MAPA	15
Questions by CHAIRMAN ROBERTI re:	
Purported Threats to Hispanic Groups	15
Clarification	15
Speculations	17
Statement by SENATOR CRAVEN	17
Statement by WILLIAM GARCIA	18
Text of MARCELLA FLORES' Letter	19
Denial by GARCIA re: JAMIE BAILEY	23
Quotation from Transcript by CHAIRMAN ROBERTI	24
Text of JAMIE SEPULVEDA-BAILEY's Letter	25
Questions to GARCIA by SENATOR PETRIS re:	
Discussions with Other Witnesses	27
Discussion with PIERCE	27
Discussions with GUERRA	28
Time of Next Meeting Regarding AB 1	29
Purpose of AB 1 Discussions	30
Questions to GARCIA by SENATOR CRAVEN re:	
Other Derogatory Comments	31
Actions Taken	31
GUERRA's Letter to PIERCE	32
Questions to GARCIA by SENATOR MELLO re:	
Location of BETTY READER	34
Lack of Detailed Information	35



I N D E X (Continued)

		<u>Page</u>
1		
2	MARK GUERRA, Director	
3	Department of Fair Employment and Housing	37
4	Questions by CHAIRMAN ROBERTI re:	
5	December, '83 Meeting	37
6	Discussion of AB 1	38
7	PIERCE's Alleged Comment	39
8	Discription of Meeting	39
9	Staff Present	40
10	Reference of Alleged Comment	40
11	Question by SENATOR DOOLITTLE re:	
12	Identity of Speaker	41
13	Questions by SENATOR PETRIS re:	
14	Actual Wording of Alleged Comment	42
15	Identity of Speaker	43
16	Later Discussions	43
17	Questions by CHAIRMAN ROBERTI re:	
18	Discussions with CHILTON	43
19	CHILTON's Response	43
20	Questions by SENATOR DOOLITTLE re:	
21	Discussions with CHLITON	44
22	Persons Present at Meeting	44
23	Timing of Alleged Comment	45
24	Alleged Comment Relating to AB 1	45
25	Identity of Laughers	45
26	Question to PIERCE by CHAIRMAN ROBERTI re:	
27	Alleged Machine Gune Comment	46
28	Question to GUERRA by SENATOR CRAVEN re:	
29	Facetiousness of Alleged Comment	46
30	Question to GUERRA by SENATOR PETRIS re:	
31	Proximity to PIERCE and KELLY at Meeting	47
32	Discussion with KELLY	47
33	Discussion with GARCIA	47
34	Reaction to Alleged Comment	47
35	Discussion with PIERCE	47
36	Time of Discussion with CHILTON	47
37	CHILTON's Conclusion	48

I N D E X (Continued)

	<u>Page</u>
Question of GUERRA by SENATOR DOOLITTLE re:	
VADER's Position in Department	49
Question of GUERRA by SENATOR PETRIS re:	
Date of VADER's Appointment	50
Recess	51
Resumption of Proceedings	51
Roll Call of Members	51
Questions of KELLY by CHAIRMAN ROBERTI re:	
Conference Room Meeting in December, '83	52
Alleged Comment	52
Location of Meeting	52
Question of KELLY by SENATOR PETRIS re:	
Alleged Comment	52
Question of KELLY by CHAIRMAN ROBERTI re:	
Use of Term "Machine Gun"	53
Rebuttal by PIERCE	53
Text of PATRICIA CANTERBURY's Letter	55
Questions to PIERCE by SENATOR PETRIS re:	
Discussions with CHILTON	56
Discussions with GARCIA	56
Possibility of Comment as Joke	57
Statement by SENATOR MELLO re:	
Difficulty of Decision	58
Motion	59
Discussion by CHAIRMAN ROBERTI	60
Discussion by SENATOR CRAVEN	60
Discussion by CHAIRMAN ROBERTI	62
Discussion by SENATOR CRAVEN	63
Discussion by SENATOR PETRIS	64
Committee Action	68
Termination of Proceedings	68
Certificate of Reporter	69



P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: To Committee Members, we will have witnesses testifying under oath. Please do not leave because we will need a quorum at all times while we are at this proceeding.

I want to start with last week's business first. That means we will start with the Governor's Appointee, Mr. Adelbert A. Pierce, Director of the Department of Motor Vehicles.

Why don't you come forward, Mr. Pierce.

Now for the record, let the record show that a quorum of the Committee is present.

This is a regularly scheduled, properly noticed meeting of the Senate Committee on Rules. This Committee is created and meets pursuant to Rules 12, 13, 16, 21.5 and 21.6 of the Standing Rules of the Senate. Section 11 of Article 4 of the California Constitution states that either House of the Legislature may by resolution provide for the selection of committees to ascertain facts and make recommendations to the Legislature on a subject within the scope of legislative control. As an investigative committee, this Committee is authorized and empowered by Senate Rules 16 and Joint Rule 36 to summon and subpoena witnesses, to require the production of records and papers of every kind and description, to issue subpoenas, and to take all necessary means to compel the attendance of witnesses and to procure both oral and documentary testimony.

In addition, Sections 9401 and 9414 of the Government Code empower this Committee to compel the appearance of witnesses

1 and the production of relevant papers and documents, and make the  
2 refusal of any witness to appear or produce such papers and  
3 documents punishable as contempt and a misdemeanor.

4 Section 1323 of the Government Code requires Senate  
5 confirmation of certain Gubernatorial appointees. Included in  
6 this requirement is the appointment of the Director of the  
7 Department of Motor Vehicles. The Governor has appointed Mr.  
8 Adelbert A. Pierce as Director of the Department of Motor  
9 Vehicles.

10 To the end of fully investigating the qualifications of  
11 Mr. Pierce, this Committee has invited certain individuals to  
12 appear before the Committee today and to testify. The Committee  
13 believes that the testimony of these witnesses will provide  
14 information to this Committee to enable it to fulfill its mandate  
15 under the Senate Rules, Joint Rules and the California  
16 Constitution and statutes.

17 Before I begin reading, I would like the record to show  
18 that Senator Craven and Senator Mello, as well as the  
19 Chairperson, Senator Roberti, were present, and now we will  
20 formally call the roll.

21 SECRETARY WEBB: Senator Doolittle. Senator Mello.

22 SENATOR MELLO: Here.

23 SECRETARY WEBB: Senator Petris. Senator Craven.

24 SENATOR CRAVEN: Here.

25 SECRETARY WEBB: Senator Roberti.

26 CHAIRMAN ROBERTI: Here.

27 A quorum, as indicated, is present.

28



1           We had a number of witnesses last week on this  
2 appointment, and I am going to try to confine the witnesses today  
3 -- let the record show that Senator Petris and Senator Doolittle  
4 have arrived and we now have five Members present.

5           I would like to confine the statements today to the  
6 alleged statements that were made in December of 1983, and also  
7 the allegation that the Governor's Office would refuse to honor a  
8 request of certain groups if they or their representatives  
9 testified in opposition to this appointment. We'll try to keep  
10 the testimony under oath to those two questions.

11           We've heard a number of other issues regarding Mr.  
12 Pierce's qualifications earlier.

13           We have with us the Legislative Counsel Mr. Mike Salerno  
14 who will swear the witnesses in.

15           MR. SALERNO: Would you stand, Mr. Pierce.

16                   (Thereupon ADELBERT A. PIERCE was,  
17 by the Legislative Counsel, sworn  
18 to tell the truth, the whole truth,  
19 and nothing but the truth before  
20 this Committee.)

21           MR. PIERCE: I do.

22           CHAIRMAN ROBERTI: Mr. Pierce, there has been some  
23 allegation that you made a statement somewhat to the effect that  
24 you knew what to do with gays or homosexual people, and that is  
25 to machine-gun them, allegedly in December sometime of 1983 at a  
26 meeting in your office that was called in regard to how the  
27 office should conduct itself on AB 1 of Assemblyman Agnos.  
28

1 Did you ever make that statement?

2 MR. PIERCE: No, I did not, Mr. Chairman.

3 CHAIRMAN ROBERTI: Also I believe Mr. Garcia, Mr. Bill  
4 Garcia, who was the headquarters operation manager of the  
5 Department of Veterans Affairs, indicated that on another  
6 occasion you had told a Mr. Bailey about another joke.

7 Do I have the text of that one?

8 MS. MICHEL: It's in the transcript. You weren't going  
9 to repeat that one, I believe.

10 CHAIRMAN ROBERTI: We'll check that and come back to it  
11 later.

12 Do you know of any other witnesses who could verify your  
13 position that you never made that statement?

14 MR. PIERCE: Yes, Mr. Chairman and Members, I believe  
15 that at the previous hearing last week Michael Kelly, who is the  
16 Deputy Director of the Department of General Services, presented  
17 information and could come forward at this time.

18 I believe that the Committee is in receipt of a sworn  
19 statement by Agency Secretary Shirley Chilton regarding the  
20 alleged statement.

21 CHAIRMAN ROBERTI: Yes, we are.

22 MR. PIERCE: And I believe that one of the individuals  
23 mentioned as being present when such statement was made is also  
24 present and could present his information regarding the meeting  
25 and whether or not the statement took place.

26 CHAIRMAN ROBERTI: Who is that?

27 MR. PIERCE: Mr. Michael Vader.  
28



1 CHAIRMAN ROBERTI: Mr. Michael Vader.

2 Would Mr. Michael Kelly and Mr. Michael Vader please  
3 come forward.

4 Mr. Kelly, we'll swear you in also.

5 MR. VADER: I'm Vader.

6 (Thereupon MICHAEL VADER was,  
7 by the Legislative Counsel, sworn  
8 to tell the truth, the whole truth,  
9 and nothing but the truth before  
10 this Committee.)

11 MR. VADER: I do.

12 (Thereupon MICHAEL KELLY was,  
13 by the Legislative Counsel, sworn  
14 to tell the truth, the whole truth,  
15 and nothing but the truth before  
16 this Committee.)

17 MR. KELLY: I do.

18 CHAIRMAN ROBERTI: Mr. Vader, regarding the statement  
19 that I referred to in regard to a meeting in December of 1983  
20 regarding an alleged comment that Mr. Pierce made at a meeting  
21 called to discuss AB 1, that he knew what he could do with some  
22 gay people and that is machine-gun them, do you ever recall such  
23 a statement being made?

24 MR. VADER: Mr. Chairman, I was not present at that  
25 meeting. It's been alleged I was there, but I was not present.

26 CHAIRMAN ROBERTI: You were not present at the meeting?

27 MR. VADER: No.  
28

1 CHAIRMAN ROBERTI: Have you ever discussed that meeting  
2 with Ms. Betty Reader?

3 MR. VADER: Not to my recollection, no.

4 CHAIRMAN ROBERTI: Let the record show that Ms. Reader  
5 in her statement, which was notarized, had indicated that Mr.  
6 Vader was one of the people who could corroborate the fact that  
7 the statement was made.

8 You weren't at the meeting?

9 MR. VADER: Was not at the meeting, no.

10 I might add, subsequently during the last year there may  
11 have been discussions because of the issues regarding the  
12 meeting, but I was not present nor have I talked to any substance  
13 about the particular meeting.

14 CHAIRMAN ROBERTI: Thank you, Mr. Vader.

15 Yes, Senator Mello.

16 SENATOR MELLO: I believe the Chair indicated that the  
17 letter from Betty Reader was notarized.

18 CHAIRMAN ROBERTI: I did. Yes, I said it was notarized.

19 It was not notarized?

20 SENATOR MELLO: Unless it's been changed since last  
21 week.

22 CHAIRMAN ROBERTI: Excuse me, it was not notarized. It  
23 was declared under penalty of perjury. I'm sorry, I was in  
24 error.

25 Mr. Kelly could you tell us what your current position  
26 is?  
27  
28



1 MR. KELLY: Deputy Director with the Department of  
2 General Services.

3 CHAIRMAN ROBERTI: Do you recall a meeting in December  
4 of 1983 called in Mr. Pierce's office regarding AB 1?

5 MR. KELLY: Yes, I recall a meeting in which we did  
6 discuss the merits of the -- the bill.

7 CHAIRMAN ROBERTI: Did you attend the meeting from  
8 beginning to end?

9 MR. KELLY: Yes.

10 CHAIRMAN ROBERTI: To the best of your knowledge, there  
11 was no other discussion during that meeting either prior to your  
12 appearance or after your appearance that it could be formally  
13 called a meeting?

14 MR. KELLY: No.

15 CHAIRMAN ROBERTI: During that meeting, do you recall  
16 Mr. Pierce making any comment to the effect that he knew what he  
17 could do with gays, and that is machine-gun them?

18 MR. KELLY: No.

19 CHAIRMAN ROBERTI: You do not recall or you did not hear  
20 it?

21 MR. KELLY: No, he didn't say it.

22 CHAIRMAN ROBERTI: Any other questions from any Members  
23 of the Committee?

24 Mr. Pierce, do you have any other witnesses on that one  
25 point that you'd like to bring forward?

26 MR. PIERCE: I believe that all those that are present  
27 or alleged were present when such a statement was made are here,  
28 and I believe the Committee should call them.

1 I don't know what they're going to say, so I'm in a  
2 difficult position to understand whether or not I want you to  
3 bring them forward on my behalf.

4 CHAIRMAN ROBERTI: Shirley Chilton is not here but we  
5 have a sworn statement from her. I think we should read that  
6 into the record. She was scheduled to be out of town and was out  
7 of town.

8 However, I would like to read the "Affidavit of Shirley  
9 R. Chilton":

10 "SHIRLEY R. CHILTON, having been duly  
11 sworn, hereby deposes and says:

12 "1) I, SHIRLEY R. CHILTON, am the  
13 Secretary of State and Consumer Services  
14 for the State of California, and have  
15 personal knowledge of all matters herein.

16 "2) I am informed and believe that  
17 questions have been raised regarding  
18 Mr. Del Pierce's alledgedly making dis-  
19 paraging comments concerning homosexuals  
20 during a meeting I reportedly attended.

21 "3) At no time have I heard Mr.  
22 Pierce make any derogatory (sic)  
23 comments regarding homosexuals.

24 "4) Specifically, at no time have  
25 I heard Mr. Pierce express a desire to  
26 inflict harm or injury upon homosexuals.

27  
28



1 "I declare the foregoing to be true  
2 and correct under penalty of perjury."

3 Signed Shirley R. Chilton, Secretary of State and Consumer  
4 Services.

5 "Subscribed and sworn to before me, this  
6 26th day of January, A.D. 1987, at  
7 Sacramento, California."

8 Artie Lee Carsley, Notary Public of County of Sacramento.

9 I'd also like to point out that we have the statement by  
10 Betty Reader indicating to the effect, as we indicated last week,  
11 that the statement was made. That was not, however, a statement  
12 that was entered pursuant to our hearing. It was entered  
13 pursuant to statements Mr. Garcia had made in regard to another  
14 matter, his State Personnel Board hearing.

15 We have tried to contact Betty Reader both through my  
16 office, innumerable phone calls, and through our Sergeant-at-  
17 arms, and since last week have been unable to make any contact  
18 with her.

19 The next witness we would like to call forward is Mr.  
20 Bill Garcia, Headquarters Operation Manager of the Department of  
21 Veterans Affairs.

22 (Thereupon WILLIAM GARCIA was,  
23 by the Legislative Counsel, sworn  
24 to tell the truth, the whole truth,  
25 and nothing but the truth before  
26 this Committee.)  
27  
28

1 MR. GARCIA: I do.

2 CHAIRMAN ROBERTI: Mr. Garcia, did you attend a meeting  
3 in Mr. Del Pierce's office in roughly December of 1983 regarding  
4 AB 1?

5 MR. GARCIA: There was a meeting, Senator Roberti, but I  
6 need to clarify as to where the meeting took place, sir, in my  
7 mind.

8 CHAIRMAN ROBERTI: Yes.

9 MR. GARCIA: The meeting was in the conference room, a  
10 small conference room, at the Agency, not in Mr. Pierce's office  
11 as testified to earlier by Mr. Kelly.

12 CHAIRMAN ROBERTI: In that conference room, who was  
13 present to your knowledge?

14 MR. GARCIA: Shirley Chilton was chairing the meeting.  
15 Mark Guerra, the Director of Fair Employment and Housing was  
16 there. I was there in my capacity as Chief Deputy Director for  
17 Fair Employment and Housing. Betty Reader was there as Deputy  
18 Director for Community Relations and Public Information Division.  
19 And Mr. Pierce came in late, and perhaps Mr. Kelly came in a  
20 little later than Mr. Pierce did in my memory.

21 CHAIRMAN ROBERTI: And do you recall during that meeting  
22 if Mr. Pierce made any comments derogatory concerning  
23 homosexuals or gay people?

24 MR. GARCIA: Yes, sir, I do.

25 I don't know if I'm able to digress for just a second  
26 from your direct question.  
27  
28



1 CHAIRMAN ROBERTI: Please answer the question, then I'll  
2 let you digress.

3 MR. GARCIA: Yes, I did. I did hear the statement made  
4 that Betty Reader testified to in her declaration.

5 CHAIRMAN ROBERTI: Yes.

6 MR. GARCIA: Now, I am --

7 CHAIRMAN ROBERTI: What was that?

8 MR. GARCIA: That was that we were -- we were discussing  
9 the impact that AB 1, the gay rights bill, would have on the  
10 Department of Fair Employment and Housing if it became law.  
11 Subsequently the Governor vetoed the bill, in my memory, but at  
12 that time we were not discussing the merits of the bill; we were  
13 discussing the impact it would have on the resources of the  
14 Department.

15 Mr. Kelly testified earlier that we were discussing the  
16 merits of the case.

17 Mr. Guerra was running an overhead projector at the time  
18 of the meeting, and we were discussing management by objectives  
19 for the Department and how this bill would impact on the  
20 resources of the Department.

21 Mr. Pierce came into the room after the meeting had  
22 started, and he asked what was being discussed. And we said AB 1  
23 and the impact that that bill will have if it passes on the  
24 resources of the Department of Fair Employment and Housing.  
25 Mr. Pierce at that time said something to the effect of: Just  
26 give me a submachine gun, and I'll take care of that problem.  
27  
28

1 Betty Reader looked at me, and I looked at Betty Reader,  
2 and we were both aghast, couldn't believe that the statement had  
3 been made.

4 Mr. Guerra, I believe, handled it a little bit better  
5 than we did. He did blink a couple of times. He couldn't  
6 believe the statement had been made either because he looked at  
7 us.

8 When we left that meeting that day, Betty Reader and I  
9 discussed it on the way back to the Department. At that time I  
10 told her that I would protest to Agency what had happened in that  
11 meeting.

12 CHAIRMAN ROBERTI: And did you?

13 MR. GARCIA: Yes, indeed I did.

14 CHAIRMAN ROBERTI: What span of time after making that  
15 statement?

16 MR. GARCIA: Uh, within a couple of days I discussed it  
17 with Mr. Guerra, and then I did discuss it with Mr. Pierce. I  
18 never could get to Ms. Chilton because she would not see me.

19 CHAIRMAN ROBERTI: Did you file a formal --

20 MR. GARCIA: No, it was a verbal.

21 CHAIRMAN ROBERTI: -- request or statement?

22 MR. GARCIA: Oral.

23 CHAIRMAN ROBERTI: To your knowledge, who else would  
24 testify to having heard him make that statement?

25 MR. GARCIA: Betty Reader would. She signed that  
26 declaration in my presence. I believe Mr. Guerra will. I know  
27 that he spoke to the newspapers relative to the remark being  
28 made.



1 CHAIRMAN ROBERTI: Any questions of Mr. Garcia?

2 SENATOR CRAVEN: When did Mr. Guerra speak to the  
3 newspapers?

4 MR. GARCIA: I provided the Committee with an article of  
5 the happening, sir. I don't have the exact date in my mind, but  
6 it is part of your folder.

7 SENATOR CRAVEN: Can you recollect whether it was  
8 immediately after the meeting to which you have referred, or was  
9 it sometime afterward?

10 MR. GARCIA: Sometime afterwards.

11 SENATOR CRAVEN: In other words, a matter of weeks?

12 MR. GARCIA: I would say more like months.

13 SENATOR CRAVEN: When this issue surfaced, when this  
14 present issue surfaced?

15 MR. GARCIA: Yes, sir.

16 SENATOR CRAVEN: Very well, thank you.

17 MR. GARCIA: Not -- not the present issue, but an issue  
18 related to Mr. Pierce.

19 SENATOR CRAVEN: Yes, that's what I'm referring to.

20 Thank you.

21 CHAIRMAN ROBERTI: Any other questions of Mr. Garcia?

22 Mr. Garcia, you also indicated that -- I believe it was  
23 in your testimony last week -- that certain Hispanic groups would  
24 not have a chance to have an appointment with the Governor -- I'm  
25 paraphrasing -- to have their agenda heard if they permitted  
26 testimony against Mr. Pierce.

27 Would you like to comment on your testimony?  
28

1 MR. GARCIA: Yes, Mr. Chairman.

2 Prior -- up to three days before this hearing, the 21st,  
3 certain organizations had determined that they really wanted to  
4 be here to testify, at least this is the information that the  
5 G. I. Forum had, whom I was representing at the last hearing.

6 Within a of matter days before the hearing of the 21st,  
7 I was informed, as I mentioned at that hearing, by Bea Molina,  
8 who is the Chairman of MAPA or Chairwoman of MAPA, that pressure  
9 was coming from the Governor's Office, that if the organizations  
10 continued along the path that they were of testifying against Mr.  
11 Pierce, that he might not make it through this Rules Committee,  
12 but if he did not, he would get a better job. And that the  
13 meetings that were scheduled with Mr. Merksamer in February of  
14 this year would be jeopardized, or something to that effect.

15 CHAIRMAN ROBERTI: That was told to Ms. Molina?

16 MR. GARCIA: Yes.

17 CHAIRMAN ROBERTI: By whom?

18 MR. GARCIA: I -- you asked me that question before,  
19 sir, and I really got the distinct impression that it came from  
20 the Community Relations Office of the Governor's Office. And  
21 then you asked me at that time who that -- or somebody did, maybe  
22 it was Mr. Petris or Mr. Mello, I'm not sure -- but I said  
23 possibly Jamie Bailey, because she's the Hispanic liaison for the  
24 Governor.

25 CHAIRMAN ROBERTI: Is Ms. Bea Molina here today?

26 FROM THE AUDIENCE: Yes.  
27  
28



1 CHAIRMAN ROBERTI: Would you mind stepping forward?  
2 We'll swear you in. You don't have to be if you don't want to  
3 be, but --

4 MS. MOLINA: I really don't mind.

5 (Thereupon BEA MOLINA was, by the  
6 Legislative Counsel, sworn to tell the  
7 truth, the whole truth, and nothing but  
8 the truth before this Committee.)

9 MS. MOLINA: I do.

10 CHAIRMAN ROBERTI: Please take a seat.

11 Do you recall anyone in the Governor's Office indicating  
12 to you that if representatives of any Hispanic organizations  
13 testified against Mr. Pierce's confirmation that they would not  
14 have either access or hearing in the Governor's Office, or would  
15 be subject to some sort of detriment?

16 MS. MOLINA: Allow me to clarify the situation so  
17 there's much more clarity here.

18 What happens -- what appears to have happened is a  
19 misunderstanding and a mixture of two separate situations. One,  
20 that we called in together about eight of the statewide  
21 organizations together and had a meeting Saturday prior to the  
22 hearing, the last hearing. At that time we -- the purpose of the  
23 meeting, and it was all attended by the state presidents of the  
24 organizations, was to develop an agenda that was going to be  
25 forwarded to the Community Relations for the Governor asking for  
26 a meeting of which we had informally been told that there may  
27 occur, and soliciting from our perspective an agenda and  
28 outlining several issues.

1           At that time, as statewide organizations -- and you have  
2 to understand that we've been quite frustrated at the lack of  
3 impact and the lack of communication to the administration --  
4 that we discussed the possibilities of how to protect this  
5 meeting and ensuring that a meeting will occur, one, and two,  
6 that it would be worth our while in terms of bringing in the  
7 organizations to Sacramento.

8           At that time it was discussed that we would not as the  
9 organizations jeopardize holding or having that meeting held with  
10 Merksamer or the Governor. That's how, I think, the confusion  
11 aroused (sic).

12           Three days later, MAPA took the position that we do have  
13 concerns about Mr. Pierce in the perspective that we are the most  
14 severely under-represented community in this state, that we've  
15 had a number of alleged violations of civil rights to -- not only  
16 in that Department but in a number of other departments, and this  
17 is in fact probably our number one priority issue. We are very  
18 concerned about the type of individuals that direct and represent  
19 the State of California, and moreover, that provide a service to  
20 our community, again the Hispanic community being the -- growing  
21 the fastest minority community.

22           In that perspective, we have come and been public about  
23 our position, our position being that we had a great deal of  
24 concerns about this appointment. And that was it.

25           At that time I decided not to testify, and it was my  
26 understanding that in the same framework, and again attempting to  
27 protect whatever we called prior to that, the meeting, we as the  
28 organizations pulled out.

1 I was never given a directive from anyone from that  
2 office saying, or nor was I threatened it would not -- a meeting  
3 would not occur.

4 CHAIRMAN ROBERTI: So, if I could roughly paraphrase,  
5 would I be correct in saying that any statements you were  
6 referring to were really speculation on the part of your  
7 organizations as to what might occur if you came up with --

8 MS. MOLINA: Speculations on situations that have  
9 occurred in the past to the organizations.

10 CHAIRMAN ROBERTI: Based on past experience.

11 MS. MOLINA: Yeah, exactly.

12 CHAIRMAN ROBERTI: Thank you very much.

13 SENATOR CRAVEN: Well, that testimony's somewhat in  
14 juxtaposition to what we heard last week.

15 You would recognize that we were told, as I recall, that  
16 someone from the Governor's Office had said.

17 In listening to this lady's testimony, I get the  
18 impression that they really brought the subject up among  
19 themselves and decided that discretion is the greater part of  
20 valor, and decided to take a little different tack, but that  
21 their action wasn't in any way prompted by any comment by any  
22 person or the administration itself.

23 CHAIRMAN ROBERTI: Yes, that as to this specific case.

24 MS. MOLINA: At least not to any of the specific  
25 presidents that were at that meeting.

26 Any other discussions that may have been held by other  
27 people, there's no way that I can take responsibility or even  
28



1 relate to that discussion. But I'm just representing the  
2 presidents who were at that meeting, yes.

3 CHAIRMAN ROBERTI: Any further questions of Ms. Molina?  
4 Again, thank you very much.

5 Mr. Garcia?

6 MR. GARCIA: I have a question, sir.

7 At the meeting, Mrs. Molina told me that she had this  
8 information from the Governor's Office that the meeting would be  
9 in jeopardy.

10 I was not there alone. I was told this. There was a  
11 witness to that discussion.

12 CHAIRMAN ROBERTI: Who is that?

13 MS. MOLINA: Roberto Vellanoweth, from the Department of  
14 Parks and Recreation.

15 MR. GARCIA: Without beating this thing to death,  
16 certain things were told to me in my capacity as a representative  
17 with the G. I. Forum, and I related that to this Committee.

18 I just want to go on record that what I told the  
19 Committee before is what was told to me.

20 CHAIRMAN ROBERTI: Any further questions?

21 SENATOR CRAVEN: Which is, if I understand correctly, is  
22 now being denied by Ms. Molina?

23 MR. GARCIA: I'm not sure.

24 MS. MOLINA: And by the other person.

25 MR. GARCIA: I'm not sure if she's denying it. To be  
26 perfectly honest, I'm confused as to whether she's saying one  
27 thing or another.

1           SENATOR CRAVEN: Well, it impresses me, at least as I  
2 try to separate your testimony, that you are telling, in effect,  
3 two different versions of the same incident.

4           CHAIRMAN ROBERTI: We have a record from the President  
5 of the united Latin organizations. Is he here?

6           MS. MOLINA: No.

7           MS. MICHEL: We have a letter from Marcella Flores,  
8 Coalition of Hispanic Organizations, denying that these things  
9 were said.

10          CHAIRMAN ROBERTI: Give me a copy of that letter.

11          From the California Coalition of Hispanic Organizations  
12 we have a letter, which I might add, was not subscribed here  
13 under oath, and I want to state that.

14          However, it's dated January 23rd; it's signed by  
15 Marcella Flores, State President, in which I would like the text  
16 read into the record.

17               (The following is the entire text of  
18 the above-mentioned letter.)

19               "Dear Senator Roberti:

20                       "This letter is in response to the  
21 statement made by William Garcia on  
22 January 21, 1987 during the State Senate  
23 Rules Committee. Mr. Garcia stated that  
24 Jamie Sepulveda-Bailey, Governor  
25 Deukmejian's liaison to the Hispanic  
26 community, threatened to cancel the  
27 meeting with the Governor, if any of the  
28

1 Hispanic groups testified against A.  
2 'Del' Pierce.

3 "I would like to refute the state-  
4 ment made by Mr. Garcia. As State Presi-  
5 dent of the California Coalition of  
6 Hispanic Organizations (CCHO), I have  
7 been requested, by a coalition of His-  
8 panic organizations to negotiate a  
9 meeting with Mrs. Bailey on a continuous  
10 basis. At no time, during any of our  
11 meetings, did Mrs. Bailey threaten to  
12 cancel or refuse to assist in attempting  
13 to schedule a meeting with the Governor.

14 "To set the record straight, a  
15 meeting has not been scheduled with the  
16 Governor, for the second week of Feb-  
17 ruary. In fact, I am still meeting with  
18 Mrs. Bailey in the endeavor to schedule  
19 such a meeting.

20 "I have worked with Mrs. Bailey on  
21 various issues and I have found her to  
22 be trustworthy. In my opinion, Mrs.  
23 Bailey would never make a statement as  
24 accused by Mr. Garcia.

25 "Additionally, I understand that  
26 your office has received numerous letter  
27 (sic) from Hispanic organizations op-  
28



1           posing the confirmation of Mr. Pierce  
2           for Directorship of the Department of  
3           Motor Vehicles. Some of the letters were  
4           from member organizations of CCHO. In  
5           fact, CCHO sent a letter requesting an  
6           investigations (sic) of the concerns  
7           raised by it's (sic) member organiza-  
8           tions. The organizations sending letters  
9           were expressing their concerns and sup-  
10          port for a fellow Hispanic who reached  
11          out for help. However, this issue is a  
12          separate issue from the attempt to sched-  
13          ule a meeting with the Governor. It is  
14          well known, that the Hispanic community  
15          has numerous concerns they are attempting  
16          to address. The need for increasing bi-  
17          lingual education is another, toxic waste  
18          dumpings is another, the needs are endless.

19                "I urge you not to lose sight of the  
20          true issue because of the erroneousness  
21          (sic) statement made by Mr. Garcia con-  
22          cerning Jamie Bailey. An investigation  
23          into the Pierce situation should answer  
24          some of the charges being raised.

25                "If you have any questions regarding  
26          any of the above, please contact me at  
27          (916)488-7678, after 5:30 p.m."  
28

1 "Marcella Flores

2 State President"

3 CHAIRMAN ROBERTI: I will read pertinent parts. If Mr.  
4 Garcia would like to see the letter -- I don't know if you have  
5 seen it.

6 MR. GARCIA: It hasn't -- I don't know -- unless you  
7 want me to --

8 CHAIRMAN ROBERTI: It reads:

9 "Dear Senator Roberti:

10 "This letter is in response to the  
11 statement made by William Garcia on  
12 January 21, 1987 during the State Senate  
13 Rules Committee. Mr. Garcia stated that  
14 Jamie Sepulveda-Bailey, Governor  
15 Deukmejian's liaison to the Hispanic  
16 community, threatened to cancel the  
17 meeting with the Governor, if any of the  
18 Hispanic groups testified against A.  
19 'Del' Pierce.

20 "I would like to refute the state-  
21 ment made by Mr. Garcia. As State Presi-  
22 dent of the California Coalition of  
23 Hispanic Organizations (CCHO), I have  
24 been requested, by a coalition of His-  
25 panic organizations to negotiate a  
26 meeting with Mrs. Bailey on a continuous  
27 basis. At no time, during any of our  
28

1 meetings, did Mrs. Bailey threaten to  
2 cancel or refuse to assist in attempting  
3 to schedule a meeting with the Governor.

4 "To set the record straight, a  
5 meeting has not been scheduled with the  
6 Governor, for the second week of Feb-  
7 ruary. In fact, I am still meeting with  
8 Mrs. Bailey in the endeavor to schedule  
9 such a meeting.

10 "I have worked with Mrs. Bailey on  
11 various issues and I have found her to  
12 be trustworthy. In my opinion, Mrs.  
13 Bailey would never make a statement as  
14 accused by Mr. Garcia."

15 And then she goes on to indicate some concerns they have with the  
16 confirmation in general, which I would like to have also read  
17 into the record, but I do not believe in regard to these two  
18 specific issues before us.

19 MR. GARCIA: Mr. Chairman.

20 CHAIRMAN ROBERTI: Yes, Mr. Garcia.

21 MR. GARCIA: I -- I was -- I read my testimony. I  
22 received a copy of the testimony today from your office.

23 I did not say that Mrs. Bailey had provided that  
24 information. I said that perhaps -- I said that out of the  
25 Governor's -- somebody --

26 CHAIRMAN ROBERTI: You so indicated --  
27  
28



1 MR. GARCIA: But the newspaper -- a newspaper article  
2 came out and said that I said Mrs. Bailey, and I think this is  
3 where Mrs. Flores is taking -- taking me to task on this, you  
4 see, because of what's printed in the news media.

5 CHAIRMAN ROBERTI: The past testimony here is:

6 "MR. GARCIA: I was told that by  
7 Bea Molina who met with the community  
8 relations officer of the Governor's  
9 Office, who also is the head of MAPA.  
10 I was told that by Mr. Gil Ybarra, who  
11 is the state chairman of the G. I. Forum."

12 "SENATOR PETRIS: And he got it  
13 from the community relations officer?"

14 "MR. GARCIA: It came from the  
15 Governor's Office."

16 "SENATOR PETRIS: Do you know which  
17 individual in that office?"

18 "MR. GARCIA: I would have to say  
19 that it would have come from a lady by  
20 the name of Jamie Bailey."

21 "CHAIRMAN ROBERTI: I would suggest  
22 that ...."

23 That's where I invited Mrs. Bailey, if she chooses, to come.

24 It tends to look like you kind of pointed a finger at  
25 the --

26 MR. GARCIA: I do know in discussions with Mrs. Molina  
27 that she mentioned that she was meeting with Mrs. Bailey. Okay?  
28

1 She never mentioned meeting with anyone else, like Mr. McCarthy,  
2 who heads that office. So I assumed that it was the liaison for  
3 Hispanic affairs, Jamie Bailey.

4 CHAIRMAN ROBERTI: Thank you.

5 Any further questions?

6 SENATOR CRAVEN: Do you wish to enter into the record a  
7 letter from Mrs. Bailey unequivocally denying that --

8 CHAIRMAN ROBERTI: Yes, for the record, Ms. Bailey's  
9 letter of January 27th will be entered into the record.

10 (The following is the entire text of the  
11 above-mentioned letter.)

12 "Dear Senator Roberti:

13 "I am writing in response to testi-  
14 mony given by Mr. William Garcia at a  
15 Senate Rules Committee Hearing on Jan-  
16 uary 21, 1987.

17 "Mr. Garcia, who presented himself  
18 as a representative of the National G.I.  
19 Forum and the American G.I. Forum, made  
20 some serious allegations during his tes-  
21 timony before your committee. He stated,  
22 for example that 'There has been alot of  
23 pressure applied recently ...' on other  
24 Hispanic organizations to prevent them  
25 from coming forth to testify at that day's  
26 hearing. In addition, Mr. Garcia speci-  
27 fically alleged that I had told MAPA,  
28

1 LULAC and the G.I. Forum 'That if some  
2 of the organizations showed up here to-  
3 day, ...' their scheduled meeting with  
4 the Governor in February would be can-  
5 celled - 'They could forget it.'

6 "Senator, I would like to take this  
7 opportunity to refute these allegations.

8 "I unequivocally deny Mr. Garcia's  
9 allegations.

10 "First of all, please be assured  
11 that a meeting has not been scheduled  
12 between these organizations and the  
13 Governor, Mr. Merksamer, or anyone else  
14 at this time. I have had several meetings  
15 and discussions with Marcella Flores,  
16 President of the California Coalition of  
17 Hispanic Organizations, who is requesting  
18 a meeting with the Governor's Office.  
19 The purpose of my meetings with Ms. Flores  
20 was to develop a proposed agenda and to  
21 prioritize issues of interest and concern  
22 to the statewide Hispanic community. At  
23 no time during these meetings, did I  
24 threaten or even imply that there was a  
25 connection between this proposed meeting  
26 with the Governor's Office and Mr. Pierce's  
27 confirmation hearing.  
28



1 "Secondly, as the Governor's liaison  
2 to California's Hispanic community, it is  
3 my responsibility to deal fairly and  
4 honestly with all members of our community,  
5 not to make threats or negotiate 'deals.'

6 "Thank you for the opportunity to  
7 respond.

8 "Sincerely,

9 "Jamie Sepulveda-Bailey"

10 CHAIRMAN ROBERTI: Senator Petris.

11 SENATOR PETRIS: Apart from Ms. Reader, did you talk to  
12 anyone else about this who was present at the meeting? Did you  
13 talk to Ms. Chilton, for example, to express your shock --

14 MR. GARCIA: No.

15 SENATOR PETRIS: -- or any of the others?

16 MR. GARCIA: I tried to, sir. I did talk to Mr. Pierce.

17 SENATOR PETRIS: At the time of the meeting or later?

18 MR. GARCIA: Yes, sir, later.

19 SENATOR PETRIS: Can you tell us what was said then?

20 MR. GARCIA: I just expressed outrage that this kind of  
21 thing would be said in that kind of a meeting, and particularly  
22 since we as a civil rights agency had the charge to ensure that  
23 protected groups were given every opportunity to be protected.

24 SENATOR PETRIS: Was anyone else present when you talked  
25 to him?

26 MR. GARCIA: Uh, no, sir, I don't believe so.

27 SENATOR PETRIS: What was his response to your comment?  
28

1 MR. GARCIA: I did not get -- oh, I hear you, something  
2 like that, I hear you, and that was it. Very vague and brief.

3 SENATOR PETRIS: You say you tried to talk to others?  
4 Did you try to talk to Ms. Chilton?

5 MR. GARCIA: Yes, I made -- I made appointments, and I  
6 would be -- I'd go over, and I would be channeled to Mr. Pierce.

7 SENATOR PETRIS: So you never got to see her?

8 MR. GARCIA: No. I -- I saw her on a couple of  
9 occasions, but not relative to this matter.

10 SENATOR PETRIS: The appointments were made for the  
11 purpose of discussing that incident with her?

12 MR. GARCIA: Yes, sir, and others.

13 SENATOR PETRIS: Did you talk to anyone else that was  
14 present?

15 MR. GARCIA: I would have talked with the Director of  
16 the Department, Mr. Guerra, because I did not believe in jumping  
17 the chain of command.

18 SENATOR PETRIS: Did you talk to him at the time of the  
19 meeting or afterward?

20 MR. GARCIA: I believe I did, sir. I believe I did. I  
21 was upset about it.

22 SENATOR PETRIS: Would you relate the conversation on  
23 that point with him?

24 MR. GARCIA: Yes, sir. We discussed it, and we were  
25 concerned about that kind of a comment being made.

26 SENATOR PETRIS: Can you tell us what his reaction was,  
27 what he said?  
28

1 MR. GARCIA: (No response.)

2 SENATOR PETRIS: Was it just a general --

3 MR. GARCIA: He said -- if my memory serves me  
4 correctly, he said that he would relay the information up that  
5 there was much concern among his staff about that type of comment  
6 being made in that kind of a setting.

7 SENATOR PETRIS: Who would get it when it's relayed up?

8 MR. GARCIA: I would imagine it would -- either Mr.  
9 Pierce or Mrs. Chilton. That would be the chain of command.

10 SENATOR PETRIS: When you talked to Mr. Guerra, was  
11 anyone else present?

12 MR. GARCIA: I believe, sir, that Betty Reader was.

13 SENATOR PETRIS: That was right at the meeting or  
14 immediately after?

15 MR. GARCIA: Immediately after because, as was  
16 customary, we -- after we had meetings at Agency, we would get  
17 back to the Department, get together and discuss a course of  
18 action as a result of those meetings.

19 SENATOR PETRIS: When did this same group meet again?

20 MR. GARCIA: On the same -- on AB 1? You mean --

21 SENATOR PETRIS: Yes.

22 MR. GARCIA: I would imagine about February or March  
23 because we had these management by objectives goals and guide --  
24 and timetables that we -- that we had put together per direction  
25 of the Agency, and so we would meet every couple of months to  
26 determine where we were, what issues were pending, any delicate  
27 or sensitive items, and so forth.  
28



1           SENATOR PETRIS: Did that incident come up at all during  
2 the next meeting?

3           MR. GARCIA: Not to my recollection, sir.

4           SENATOR PETRIS: Did you say anything about it to  
5 anybody at the next meeting?

6           MR. GARCIA: I don't believe so, no.

7           SENATOR PETRIS: Now, the purpose of discussing AB 1 was  
8 to determine what impact it would have on the Agency. Was that  
9 for the purpose of forwarding a recommendation to the  
10 administration on whether that should be supported or not?

11          MR. GARCIA: I believe that -- that it was already a  
12 foregone conclusion that it had gone through the Legislature at  
13 the time, and it was on the Governor's desk for signature, and  
14 that we should be prepared -- we should prepare in the event that  
15 he signed it. So we were discussing the fiscal impact it would  
16 have relative to adding more bodies to service the clientele, and  
17 space, the whole realm of what it takes to put -- put another  
18 program in place, and not the merits. We were not discussing the  
19 merits of whether we should --

20          SENATOR PETRIS: Just discussing impact?

21          MR. GARCIA: Yes.

22          CHAIRMAN ROBERTI: Any further questions?

23          SENATOR CRAVEN: I have.

24          CHAIRMAN ROBERTI: Senator Craven.

25          SENATOR CRAVEN: In your rather extensive experience --

26          CHAIRMAN ROBERTI: I have someone outside to meet me.  
27  
28

1           Senator Craven, I'll turn the Chair over to you just for  
2 a few moments, and I'll be right back.

3           SENATOR CRAVEN: Very well.

4           In your somewhat extensive experience with the  
5 Department, dealing with all types of people, you know, from a  
6 religious standpoint, or ethnic standpoint, or any number of  
7 other areas, this is the only time that you had ever heard  
8 anybody make any statement that could be called a derogatory,  
9 whether it was said seriously or facetiously? This was the only  
10 time that you'd ever heard any comment made, not by Mr. Pierce  
11 but by anyone?

12           MR. GARCIA: That is not true, sir. I had heard other  
13 comments.

14           SENATOR CRAVEN: You've heard other comments?

15           MR. GARCIA: Yes, sir.

16           SENATOR CRAVEN: Significant comments?

17           MR. GARCIA: Significant.

18           SENATOR CRAVEN: To whom did you report those?

19           MR. GARCIA: In the one case to the Director of the  
20 Department when jokes were made by Shirley Chilton about  
21 Japanese-Americans. The joke that Mr. Kelly told was discussed  
22 in Department.

23           There were other instances that were brought out in the  
24 hearing before the State Personnel Board. In fact, I believe it  
25 was Senator Mello that said that a judge would throw Betty  
26 Reader's testimony out if -- because of dates and times not being  
27 there. But they did accept her testimony in that hearing. The  
28

1 judge accepted it into testimony. That's on the record, by the  
2 way.

3 The whole -- the whole atmosphere at the Department  
4 during my tenure as Chief Deputy was one of this type of  
5 situation taking place. When Mr. Guerra initially approached me,  
6 Mr. Guerra being the Director of that Department, to come over  
7 and help him become more familiar with state service, to help him  
8 in the transition, I was reluctant to go over. I had been a  
9 civil rights officer for the Department of Health, Education and  
10 Welfare, federal level, for a couple years at a GS-14 level,  
11 which is a pretty high level. And I knew the charges, the  
12 responsibilities, and I knew the law of the land, the federal law  
13 of the land.

14 SENATOR CRAVEN: Yes.

15 MR. GARCIA: And I was reluctant, but I went over to  
16 help him, and as soon as I got over there I realized that I was  
17 really in the wrong job at the wrong time. And at that time,  
18 because of these things happening, I tried to exercise my return  
19 rights to my old position. And I mentioned that at the earlier  
20 hearing.

21 SENATOR CRAVEN: You are aware of the fact that Mr.  
22 Guerra had written to Mr. Pierce congratulating him upon assuming  
23 the position that he had, and the comment there is very  
24 laudatory.

25 Are you aware of that?

26 MR. GARCIA: I'm sorry, sir. What position?

27 SENATOR CRAVEN: Well, he says:  
28



1 "Your very expert advise during the  
2 difficult transition years was of  
3 great value in helping us develop  
4 the Department to its present suc-  
5 cessful status."

6 MR. GARCIA: He wrote that on Mr. Pierce's behalf?

7 SENATOR CRAVEN: No, he wrote a letter to Mr. Pierce.

8 MR. GARCIA: On my behalf?

9 SENATOR CRAVEN: No, it had nothing to do with anyone's  
10 behalf. He was evidently motivated to congratulate Mr. Pierce  
11 upon assuming his role, and he says on the lead:

12 "On behalf of the Department of Fair  
13 Employment and Housing, I want to con-  
14 gratulate you on your appointment to  
15 the Directorship of the Department of  
16 Motor Vehicles and to express thanks for  
17 all your services and support to this  
18 Department."

19 And I think the close is one that I should bring to Mr. Pierce's  
20 attention. Mr. Guerra says:

21 "If we can ever be of assistance to you,  
22 please do not hesitate to call."

23 MR. GARCIA: Well, sir --

24 SENATOR CRAVEN: Maybe now's the time.

25 MR. GARCIA: Sir, might I say this, that during the  
26 hearing before the State Personnel Board, which was before Mr.  
27 Pierce received his Directorship at the DMV, Mr. Guerra had  
28 testified that he had heard these comments made by Mr. Pierce.

1           So, what the letter contains and why it contains what it  
2 does, I can only tell you that Mr. Guerra will have to answer to  
3 that.

4           SENATOR CRAVEN: Very well.

5           Is there anyone else who has a question? Senator Mello  
6 has a question, Mr. Garcia.

7           SENATOR MELLO: It would appear from the affidavit and  
8 information everybody keeps referring to Betty Reader, and she  
9 appears to be a very important person that we should have here  
10 testifying.

11          Do you know where she might be located right now?

12          MR. GARCIA: I do know that she was called away from  
13 state service to run her father's businesses because her  
14 father's, from what I understand, been very ill. Her father owns  
15 mobilehome parks, that sort of thing. So she has very -- she is  
16 very difficult to reach. I'm not sure where the locations of the  
17 businesses are.

18          SENATOR MELLO: Well, based on our information, we  
19 attempted to subpoena her also this week, and according to this  
20 information on the 22nd and through the 28th, our Senate Rules  
21 Committee staff made repeated attempts to reach Ms. Reader by  
22 telephone. Thirty to fifty calls were placed both at her  
23 residence and her place of employment. And they attempted to  
24 deliver the subpoena at the times listed here, 11:45, 12:45, 2:00  
25 and 8:30 p.m. at both her office and residence, and then on the  
26 28th, at 7:30 a.m. and 9:30 a.m. at her residence. The  
27 Sergeant-at-arms was unable to deliver.  
28

1 I don't know whether she was home and wouldn't answer  
2 the door or the bell, but with you here, I would think it would  
3 be important to have her testimony to corroborate what you're  
4 saying.

5 MR. GARCIA: Well sir, you have her testimony.

6 SENATOR MELLO: Well, we have it. As I said, you know,  
7 you referred to my statement.

8 Our most difficult job is to try to put a credibility  
9 rating on everybody's statement and also matters that are here  
10 before us. And even though you said a judge accepted her  
11 statement, to me, if I was a judge -- which I never hope to be  
12 for many reasons, believe me -- I would have certainly asked for  
13 a specific date. She says around December, '83, no time. In  
14 fact, in talking to other people, some say it was in November,  
15 others say it was November, and some can't remember. And what's  
16 so amazing, these are all top executives of state government, and  
17 no one seems to keep a calendar as to what time they're meeting  
18 or doing something. I just can't understand it.

19 I think all of us here as Legislators, we can go back  
20 and check our day-to-day calendars and appointments and find out  
21 precisely where we are and what we're doing.

22 That's why I have a hard time given her an "A" for her  
23 letter, because it's lacking a lot of vital information. And by  
24 her inability to be subpoenaed, unless she's sick away from home,  
25 or some other, you know, reasonable excuse --

26 MR. GARCIA: Bear in mind, sir --  
27  
28



1           SENATOR MELLO:  -- I don't know whether she's evading  
2 this Committee, or whether she is a reluctant witness, or whether  
3 or not she would move forward and want to testify.

4           MR. GARCIA:  Bear in mind, sir, that at the time that  
5 the action was taken against me in my demotion, this was in March  
6 of '85.  At that time this issue surfaced.  At that -- during  
7 that period of time Mrs. Reader made her testimony.

8           A lot of time has gone by by the time Mr. Pierce came up  
9 for confirmation.  So consequently, bureaucrats -- and I'm not  
10 saying they're right -- but as a rule keep their calendars for  
11 the past year and the present year, not for two and three years.

12          SENATOR MELLO:  You know, the Internal Revenue Service  
13 comes in up to five years.  Anybody that throws away their  
14 calendar or anything within five years is just taking a big risk.

15          MR. GARCIA:  Well, I'm just -- I'm not -- I'm not  
16 talking about IRS matters, but relative to meetings that you had  
17 and so forth, you go through, and you glean out the ones that you  
18 feel that you need to have information on, but a lot of time had  
19 gone by.

20          Now, when -- when a Director, a Chief Deputy Director  
21 and a Deputy Director say that the statement was made, I think it  
22 has to be remembered what do these people have to lose by coming  
23 forth and saying that, and what does the other side have to gain  
24 by saying that statement wasn't made.

25          SENATOR MELLO:  There's another factor here, too, which  
26 makes our job even more difficult.

27

28

1 All of you sitting there have taken a sworn statement  
2 that you're telling the truth, and that's what our counsel and  
3 all of you agreed to that.

4 Yet you're saying this was said. Betty Reader's not  
5 here, of course, but she signs that it was said. Yet others,  
6 Mr. Vader and Mr. Kelly, and through a notarized paper of Shirley  
7 Chilton, said that it was not said.

8 You know, somebody is violating the oath that they've  
9 just taken here an hour ago, as far as I'm concerned.

10 MR. GARCIA: Yes, sir, I agree with you. And I don't  
11 think it's the people that have testified in -- right at this  
12 point, I don't think I'm violating. I'm a God-fearing man.

13 SENATOR MELLO: I didn't say you were. Somebody is  
14 because several people have taken an oath before this Committee  
15 and made contradictory statements.

16 CHAIRMAN ROBERTI: If there are no further questions, we  
17 will go to Mr. Mark Guerra.

18 (Thereupon MARK GUERRA was, by the  
19 Legislative Counsel, sworn to tell the  
20 truth, the whole truth, and nothing but  
21 the truth before this Committee.)

22 MR. GUERRA: I do.

23 CHAIRMAN ROBERTI: Mr. Guerra, let me ask you, did you  
24 attend a meeting, I believe as indicated now, in a conference  
25 room in the Department of Motor Vehicles in December of 1983  
26 regarding AB 1?

27

28

1 MR. GUERRA: Not the Department of Motor Vehicles. I've  
2 never been there except to get my license renewed.

3 CHAIRMAN ROBERTI: Excuse me, Department of Consumer  
4 Affairs.

5 MR. GUERRA: Okay.

6 CHAIRMAN ROBERTI: Did you attend such a meeting?

7 MR. GUERRA: Yes, I did.

8 I tried to, in answer to Senator Mello's concern, I  
9 tried to go back over our files going back that far. The nearest  
10 I can pinpoint a meeting held at the Secretary's office was  
11 December 29th at 2:00 p.m.

12 Now, I'm not saying that was the meeting, but that was a  
13 meeting in my records as they show now of myself and my deputies  
14 as going to, December 29th, I think it was a Wednesday, or  
15 something like that.

16 CHAIRMAN ROBERTI: At that meeting do you recall AB 1  
17 being discussed?

18 MR. GUERRA: I'm sorry?

19 CHAIRMAN ROBERTI: Do you recall AB 1 being discussed as  
20 legislation prohibiting discrimination against gay or homosexual  
21 people in employment?

22 MR. GUERRA: Yes, sir, as a part of a larger --

23 CHAIRMAN ROBERTI: Or sexual preference, I guess that  
24 would be a word --

25 MR. GUERRA: Yes, sir, as a part of a larger discussion  
26 of MBOs.  
27  
28



1           CHAIRMAN ROBERTI: And during that meeting, was Mr. Del  
2 Pierce present?

3           MR. GUERRA: Yes.

4           CHAIRMAN ROBERTI: During that meeting, do you recall  
5 Mr. Del Pierce making disparaging remarks concerning gay people  
6 or homosexual people?

7           MR. GUERRA: During the meeting and during the time that  
8 I heard the statement, I didn't know that they were disparaging  
9 remarks.

10          Let me explain that.

11          We were -- we were using an overhead projector. And we  
12 were discussing the total MBO program, the impact of the present  
13 legislation that was going through the Legislature, legislation  
14 rather, and what impact it would have on our resources. I was  
15 operating the overhead projector.

16          At the time that I heard the remark, it was either  
17 during a break or at the very end of the meeting, because I was  
18 very busy collecting my forms, I had my papers, and taking care  
19 of the machine. It was during that time that I heard the remark  
20 about taking care of things with a machine gun.

21          I did not know at that particular moment that it was in  
22 any way connected with AB 1 or any of the other legislation that  
23 we were discussing.

24          CHAIRMAN ROBERTI: Or regarding homosexuals.

25          MR. GUERRA: That's right, exactly. And I did not know  
26 that it was in any way connected, as I said before, with -- with  
27 our discussion of the legislation we were discussing.

28

1           Until we left the meeting. When we left the meeting, my  
2 staff was upset, and it was on the way out of the building that I  
3 then learned from them that the remark had been related to AB 1,  
4 but --

5           CHAIRMAN ROBERTI: You said your staff was upset. Who  
6 on your staff was there?

7           MR. GUERRA: Uh, Mr. Garcia and Mrs. Reader. We were  
8 the only ones there, the three of us.

9           CHAIRMAN ROBERTI: So you heard the remark.

10          MR. GUERRA: Yes, sir.

11          CHAIRMAN ROBERTI: And based on the context of the  
12 conversation that you did hear, or the comment you did hear, did  
13 it strike you as reasonable that the remark was made in reference  
14 to homosexuals?

15          MR. GUERRA: No, sir. I was totally ignorant as to what  
16 the remark --

17          CHAIRMAN ROBERTI: No, but after they had indicated to  
18 you that that's what was said.

19          MR. GUERRA: I'm sorry, would you repeat that?

20          CHAIRMAN ROBERTI: After Ms. Reader and Mr. Garcia  
21 indicated to you that is what was said, and that it was in  
22 relation to homosexuals, did that strike you as a reasonable  
23 deduction of the conversation?

24          MR. GUERRA: Deduction? Explanation of what happened?

25          CHAIRMAN ROBERTI: Explanation of what happened, yes.

26          MR. GUERRA: No, sir. I was ignorant, not having heard  
27 the remark made in the context of our discussion.  
28

1 CHAIRMAN ROBERTI: So when they said it was in  
2 relationship to homosexuals and they were upset --

3 MR. GUERRA: Yes.

4 CHAIRMAN ROBERTI: -- you still didn't feel that was  
5 necessarily the case?

6 MR. GUERRA: I didn't know.

7 CHAIRMAN ROBERTI: You didn't know.

8 MR. GUERRA: Did not know.

9 CHAIRMAN ROBERTI: And to this day, do you know or don't  
10 know whether his remark, as you heard it, was related --

11 MR. GUERRA: Under oath I cannot tell you that I'm  
12 certain that it was, because at that time I did not hear it  
13 related to the discussion we were having.

14 I believe the meeting was either over or there was a  
15 break there.

16 CHAIRMAN ROBERTI: Any other questions? Senator Petris  
17 and then Senator Doolittle. Senator Doolittle and then Senator  
18 Petris.

19 SENATOR DOOLITTLE: I just have a very brief question.

20 You said you were in the meeting. You heard a statement  
21 about a machine gun.

22 Did you understand that statement to have been made --

23 MR. GUERRA: I heard the statement made.

24 SENATOR DOOLITTLE: Did you identify at that time who  
25 made it?

26 MR. GUERRA: Yes, sir.

27 SENATOR DOOLITTLE: And that person was?  
28



1 MR. GUERRA: Del Pierce.

2 SENATOR DOOLITTLE: Thank you.

3 CHAIRMAN ROBERTI: Senator Petris.

4 SENATOR PETRIS: I'm curious, what were the words you  
5 actually heard? "I'd use a machine gun," without anything else,  
6 no other part of it?

7 MR. GUERRA: To the best of my recollection, I think it  
8 was, "I can take care of that problem. Just give me a machine  
9 gun."

10 SENATOR PETRIS: Now, you didn't know what problem was  
11 being referred to?

12 MR. GUERRA: No, I did not.

13 SENATOR PETRIS: Were you curious as to --

14 MR. GUERRA: No, sir, I was too busy.

15 SENATOR PETRIS: -- which problem was going to be solved  
16 by a machine gun, or is that --

17 MR. GUERRA: No, sir. I was not interested. It was not  
18 in the context of the meeting, and I was not interested to find  
19 out. I was too busy putting my stuff together to get out.

20 SENATOR PETRIS: What were you doing?

21 MR. GUERRA: I was taking care of the overhead projector  
22 machine and forms that I had used to do my illustrations, and the  
23 remark, as I recall, was made off to the side. In other words,  
24 we were at a table. Our discussions of course always when we  
25 would, in the context of discussing the issues, were give and  
26 take face-to-face.

1           This remark was made on the -- at the side of the table,  
2 facing -- Mr. Pierce, I believe, was facing to my right. It was  
3 at the break, so I did not know. I was in total ignorance as to  
4 what it related to.

5           SENATOR PETRIS: Do you have any doubt as to who made  
6 the statement?

7           MR. GUERRA: No, sir.

8           SENATOR PETRIS: Did you ask him about it?

9           MR. GUERRA: I don't recall.

10          SENATOR PETRIS: Did you talk to anybody about what kind  
11 of problem is it we're going to solve or he's going to solve in  
12 this manner?

13          MR. GUERRA: I had no direct information about his  
14 making the remark related to AB 1. I had -- to me, it was  
15 hearsay. It was unfortunate that a remark had been made, but it  
16 was hearsay. I do not like to confront people with hearsay.

17          So, I did discuss the matter with Secretary Chilton, and  
18 we decided that it was an offhand remark, a joke said in jest,  
19 and we -- I believe after that she -- I left it up to her to --  
20 to discuss the matter with, uh, with Mr. Pierce.

21          CHAIRMAN ROBERTI: So you did bring it up with Ms.  
22 Chilton?

23          MR. GUERRA: I'm sure I -- yes.

24          CHAIRMAN ROBERTI: Did she say to you that she had heard  
25 the remark?

26          MR. GUERRA: No, she did not. This may have been on the  
27 phone, too. I don't know that I met her.  
28

1 CHAIRMAN ROBERTI: Senator Doolittle, then Senator  
2 Craven.

3 SENATOR DOOLITTLE: Do you have a clear recollection of  
4 having discussed it with Mrs. Chilton?

5 MR. GUERRA: No, no. I have a vague recollection of  
6 discussing that and possibly one or two other things that I felt  
7 should be discussed in order to get more, uh, a more orderly  
8 meeting, and also to get better production from our time spent in  
9 the meeting.

10 These were normal discussions as to how best we could  
11 conduct these meetings in order to get the most out of -- out of  
12 the meetings.

13 SENATOR DOOLITTLE: But at this time you can't state  
14 unequivocally that you did in fact discuss it with Mrs. Chilton?

15 MR. GUERRA: Unequivocally, no. I cannot pinpoint it.

16 SENATOR DOOLITTLE: Could you describe, and if you said  
17 this I apologize for making you repeat yourself, who was in  
18 attendance at this meeting?

19 MR. GUERRA: I recollect that -- it's funny how things  
20 -- you remember things and you forget obvious things.

21 But at the meeting, I was at the head of the table. To  
22 my left was my staff, Mr. Garcia first and then Mrs. Reader. To  
23 my right was Secretary Chilton, and then to her right was Mr.  
24 Pierce, and to his right was Mr. Kelly.

25 SENATOR DOOLITTLE: So there were five people, plus  
26 yourself, six people total in this meeting as you recall it?

27 MR. GUERRA: Yes, sir.  
28



1           SENATOR DOOLITTLE: And you were having a break, like a  
2 coffee break or something?

3           MR. GUERRA: I rather think it was the end of the  
4 meeting.

5           SENATOR DOOLITTLE: This was the end of the meeting, and  
6 people were chatting amongst themselves at that point?

7           MR. GUERRA: Yes, I think I would characterize it in my  
8 memory that's about when -- when this happened.

9           SENATOR DOOLITTLE: And you heard something about a  
10 machine gun that would solve a problem. You do remember Mr.  
11 Pierce making a statement, but you don't remember it being in  
12 conjunction with anything having to do with homosexuals or AB 1?

13          MR. GUERRA: Right.

14          SENATOR DOOLITTLE: However, when did you first decide  
15 that it was connected, or when did you hear that it had been  
16 connected in one way or another to those two?

17          MR. GUERRA: When we left the building -- the building  
18 on the way out, Mrs. Reader and Mr. Garcia -- I asked them, "What  
19 was all the commotion about? What was all that blah-blah thing  
20 about?" Then they told me about that, and it was at that time  
21 that I learned from them that it was related to the AB 1 bill  
22 that we had been discussing.

23          SENATOR DOOLITTLE: You mentioned loud laughing. Who  
24 was laughing loudly?

25          MR. GUERRA: I -- one of those times that I recall, and  
26 you know, one recalls little things, but it was Mr. Pierce and  
27 Mr. Kelly.  
28

1 SENATOR DOOLITTLE: Do you recall anybody else laughing?

2 MR. GUERRA: No, I don't.

3 SENATOR DOOLITTLE: Was it then Mr. Pierce and Mr. Kelly  
4 sort of huddled together over on the side?

5 MR. GUERRA: I wouldn't say huddling, no.

6 SENATOR DOOLITTLE: Thank you.

7 CHAIRMAN ROBERTI: Let me ask you a question, Mr.  
8 Pierce.

9 Did you make at that meeting any comments regarding  
10 machine guns?

11 MR. PIERCE: Senator, I didn't make any comments  
12 regarding machine guns.

13 CHAIRMAN ROBERTI: Senator Craven, then Senator Petris.

14 SENATOR CRAVEN: Mr. Guerra, there is a certain  
15 allegation relative to the statement about solving a problem by  
16 the use of a submachine gun. Certain people say it wasn't  
17 uttered, and others like yourself say that they heard it.

18 In the environment in which that allegation of statement  
19 was made, having in your mind heard that, would you say that that  
20 statement was a studied or a serious or a comical or a facetious  
21 statement?

22 MR. GUERRA: I would say it was a facetious statement.

23 SENATOR CRAVEN: Thank you very much.

24 CHAIRMAN ROBERTI: Senator Petris.

25 SENATOR PETRIS: I'd like to get back to the actual  
26 happening.

27

28

1           You were picking up your stuff, the projector and all.  
2 Were you standing closer to Mr. Pierce than Mr. Kelly was, or was  
3 Kelly really next to him?

4           MR. GUERRA: Mr. Kelly was next to Mr. Pierce, and I  
5 believe Secretary Chilton was between us, between myself and Mr.  
6 Pierce. Mister -- both Mr. Pierce and Mr. Kelly were facing me.

7           SENATOR PETRIS: Did you talk to Mr. Kelly at all about  
8 that statement?

9           MR. GUERRA: I did not.

10          SENATOR PETRIS: Did you talk to Mr. Garcia?

11          MR. GUERRA: I don't recall, except at the time that we  
12 had left the officer there and they were upset.

13          SENATOR PETRIS: Is that when you found out what the  
14 reference was, when you saw that they were upset?

15          MR. GUERRA: Yes.

16          SENATOR PETRIS: How did that come about? Did they tell  
17 you, or did you ask them what was this all about?

18          MR. GUERRA: I asked what was that all about.

19          SENATOR PETRIS: What was your reaction when you were  
20 told it's tied into AB 1?

21          MR. GUERRA: I thought it was unfortunate.

22          SENATOR PETRIS: Did you ever talk to Mr. Pierce about  
23 it later?

24          MR. GUERRA: No, he was not my employee, and I talked to  
25 his boss, Ms. Chilton.

26          SENATOR PETRIS: But you don't have a recollection now  
27 as to whether it was immediately upon hearing the remark or  
28 sometime before you left that room or some other time later?



1 MR. GUERRA: Some other time, I'm sure of that.

2 SENATOR PETRIS: You're sure of that?

3 MR. GUERRA: Two or three days, maybe, a week later that  
4 -- that perhaps I came and talked.

5 SENATOR PETRIS: After you talked to her, had she  
6 concluded that on the basis of what you had said that it was  
7 probably done in jest rather than serious?

8 MR. GUERRA: Yes, sir.

9 SENATOR PETRIS: She didn't recall having heard it  
10 herself?

11 MR. GUERRA: I don't know that.

12 SENATOR PETRIS: She didn't comment on it one way or the  
13 other?

14 MR. GUERRA: Oh, I see, during our -- she listened to me  
15 about the matter, and she did not corroborate or deny that she --  
16 that she had heard the -- the remark, but any problems that we  
17 encountered during these meetings, we'd discuss them, we took  
18 care of them. This was a matter that was an unfortunate  
19 situation, and we just had to -- just decided we had to be more  
20 careful.

21 SENATOR PETRIS: Was there any conclusion on her part  
22 about talking to Mr. Pierce?

23 MR. GUERRA: Conclusion to what?

24 SENATOR PETRIS: Well, you have to be more careful. How  
25 was Mr. Pierce going to know that you're supposed to be more  
26 careful if somebody up higher didn't question him?

1 MR. GUERRA: I don't recall that she said what she said  
2 she was going to do or when she was going to do it.

3 SENATOR PETRIS: Did she indicate in any manner --

4 MR. GUERRA: She indicated that she would take care of  
5 it, yes sir.

6 SENATOR PETRIS: And that included having people be more  
7 careful?

8 MR. GUERRA: Yes.

9 CHAIRMAN ROBERTI: Senator Doolittle wants to ask  
10 questions, then we will break for ten minutes.

11 SENATOR DOOLITTLE: Mr. Guerra, Mr. Vader is your Chief  
12 Deputy Director; is that right?

13 MR. GUERRA: That's correct.

14 SENATOR DOOLITTLE: I guess that's an appointment that's  
15 made by the Governor, but is that an appointment into which you  
16 had some input?

17 MR. GUERRA: Yes, I picked Mr. Vader to be my Chief  
18 Deputy.

19 SENATOR DOOLITTLE: You picked Mr. Vader?

20 MR. GUERRA: Yes.

21 SENATOR DOOLITTLE: At the time, he held another  
22 position when this incident occurred. It was your testimony that  
23 he heard something, some comment being made about taking care of  
24 a problem with a machine gun, which was made by Mr. Pierce, and  
25 that there was some loud laughter which was that of Mr. Kelly, I  
26 guess; is that right?

27 MR. GUERRA: Yes.  
28

1           SENATOR DOOLITTLE: And Mr. Kelly is a Deputy Director,  
2 I guess, of the Department of General Services, all right.

3           Well, that clears up the question that I had, thank you.

4           MR. GUERRA: May I have a comment on that matter?

5           CHAIRMAN ROBERTI: Yes, Mr. Guerra.

6           MR. GUERRA: I don't see Mr. Vader's name necessary to  
7 be used here. He was yet at the Department. He was not at that  
8 meeting. He was not a member of my staff at that time.

9           CHAIRMAN ROBERTI: This was a meeting in the conference  
10 room?

11          MR. GUERRA: Yes, sir.

12          CHAIRMAN ROBERTI: We will break for --

13          SENATOR PETRIS: How soon did he come did he come in, a  
14 week or two?

15          CHAIRMAN ROBERTI: How soon after did Mr. Vader come in?

16          MR. GUERRA: About -- it was the following year. It was  
17 in 1984. I cannot pinpoint the month, but it was early '84, I  
18 believe.

19          SENATOR PETRIS: Could have been as early as January?

20          MR. GUERRA: Could have been.

21          SENATOR PETRIS: Thank you.

22          CHAIRMAN ROBERTI: We will break until 3:00 o'clock, and  
23 then I would like to call Mr. Kelly back, and hopefully bring  
24 this to some conclusion.

25          MR. GUERRA: Will you be needing me any more, sir?

26          CHAIRMAN ROBERTI: Anyone have any more questions of Mr.  
27 Guerra?  
28



1 I think you ought to stay in case somebody says  
2 something in relationship to what you have to testify. I do not  
3 expect we're going to be here that much longer on the matter.

4 We're in recess until 3:00 o'clock.

5 (Thereupon a brief recess was taken.)

6 CHAIRMAN ROBERTI: The Committee will reconvene.  
7 Secretary will call the roll.

8 SECRETARY WEBB: Senator Doolittle.

9 SENATOR DOOLITTLE: Here.

10 SECRETARY WEBB: Senator Mello.

11 SENATOR MELLO: Here.

12 SECRETARY WEBB: Senator Petris.

13 SENATOR PETRIS: Maybe.

14 (Laughter.)

15 SECRETARY WEBB: Senator Craven.

16 SENATOR CRAVEN: Here.

17 SECRETARY WEBB: Senator Roberti.

18 CHAIRMAN ROBERTI: Here.

19 Let the record show senator Petris is here also.

20 Mr. Kelly, you're still under oath, and that is just to  
21 remind.

22 During my questioning of you, I had asked you about a  
23 meeting in Mr. Pierce's office. I subsequently found out that  
24 the meeting was not in Mr. Pierce's office; the meeting where the  
25 comment allegedly was made was in a conference room in the  
26 Department of Consumer Affairs in the month of December.

27  
28

1 I want to know from you, within that proviso, the  
2 conference room, December of 1983, did you hear any comments made  
3 at a meeting discussing AB 1 by Mr. Del Pierce regarding taking  
4 care of the problem, or taking care of gays, or taking care of  
5 homosexuals, or something along those lines, by the use of a  
6 submachine gun?

7 I want to make sure that the meeting is the same meeting  
8 in our minds. Did you hear?

9 MR. KELLY: No, I did not. I still do not recall any  
10 comment like that being made.

11 CHAIRMAN ROBERTI: Do you recall where that meeting took  
12 place?

13 MR. KELLY: After Mr. Guerra talked about his overhead  
14 projector, I do recall a meeting in which I think they were  
15 discussing management by objectives.

16 CHAIRMAN ROBERTI: And in a conference room.

17 MR. KELLY: And in a conference room. I do recall  
18 attending a meeting.

19 CHAIRMAN ROBERTI: Thank you very much.

20 Any other questions? Senator Petris.

21 SENATOR PETRIS: I guess it would be redundant. Do you  
22 recall seeing Mr. Guerra there doing work on the projector?

23 MR. KELLY: Yes.

24 SENATOR PETRIS: But you say that there was no such  
25 statement made at all by Mr. Pierce?

26 MR. KELLY: Not to my recollection, none.  
27  
28

1 CHAIRMAN ROBERTI: Did you ever the word machine gun or  
2 submachine gun used?

3 MR. KELLY: Have I ever heard the term --

4 CHAIRMAN ROBERTI: No, during that meeting?

5 MR. KELLY: No, I don't recall it even being used.

6 CHAIRMAN ROBERTI: Thank you.

7 Mr. Pierce, you may rebut some of the testimony that was  
8 made if you choose.

9 MR. PIERCE: Mr. Chairman, Senators, I'd like to take  
10 this opportunity to perhaps clarify a couple points that were  
11 made during some of the testimony here regarding Hispanics in  
12 state government, or regarding minorities in state government.

13 I chaired the Governor's Steering Committee on  
14 Affirmative Action which resulted in an executive order being  
15 issued by the Governor setting forth the employment policies that  
16 the executive branch of state government would use, and how we  
17 would move forward on trying to attract and retain minorities and  
18 women in state government.

19 As a result of those efforts, which I believe Richard  
20 Chavez from the State Personnel Board worked with me on that, I  
21 think that we've made some progress.

22 I've now had an opportunity as a Department head to put  
23 into practice many of the things that I learned as a result of  
24 chairing that steering committee, and I believe that you have in  
25 your folders a letter from CAFE, representing the Hispanics in  
26 State Government, that I received an award last year for our  
27 Department making significant progress.  
28



1 I'm here to tell you today that not only did we make  
2 significant progress during the period in which the award was  
3 based, but subsequent to that we were able to continually  
4 increase our representation of Hispanics in state government, not  
5 only entry level, but also minorities in terms of promotions.

6 There has been some remarks made with regard earlier to  
7 the manner in which the Department handles grievances and  
8 discrimination complaints. I have told you last week and I'm  
9 telling you again this week that our Department takes any form of  
10 grievance or discrimination complaint seriously, and we move to  
11 expedite an inquiry~~X~~ and take appropriate action.

12 And I have here today with me our EEO Officer, Pat  
13 Canterbury, who, since she manages the program, would be  
14 perfectly willing to come forward and answer any questions that  
15 this Committee may have.

16 I feel that in my 20 years of state government, I feel  
17 that I have performed fairly, judged people equitably, and  
18 provided a climate and environment in which we can all move  
19 forward to carry out the mission of state government and we can  
20 be proud of it.

21 I ask that this Committee judge my qualifications and  
22 take the appropriate action.

23 CHAIRMAN ROBERTI: I have read, Mr. Pierce, the  
24 statement of Ms. Patricia Canterbury regarding your affirmative  
25 action programs. I would like that read into the record, and all  
26 the Members, I believe, do have the attached statement -- excuse  
27 me, regarding disposition of complaints on sex and ethnicity  
28 discrimination. I would like that read into the record.

1 (The following is the entire text of  
2 the above-mentioned letter.)

3 "Dear Ms. Michaels (sic):

4 "Attached you will find a summary  
5 of the types of discrimination complaints  
6 the Department of Motor Vehicles (DMV)  
7 EEO Office handled for 1985 and 1986.

8 "We have included the type of com-  
9 plaint and sex/ethnicity profile for  
10 1986.

11 "The EEO Office handled approximately  
12 27 discrimination complaints in 1985.  
13 This number was compiled from the 1985  
14 quarterly reports.

15 "This office did not have access to  
16 a personal computer during that year, and  
17 the complaints were recorded using a dif-  
18 ferent method. The details of the com-  
19 plaints are not readily available, but  
20 can be obtained by going through indivi-  
21 dual complaint files. It would take us  
22 about a week to go through the files.

23 "If I can be of further help, please  
24 call me at 732-7083.

25 "Sincerely,

26 "Patricia E. Canterbury

27 "EEO Officer"  
28

1 CHAIRMAN ROBERTI: Are there any other individuals who  
2 would like to testify on the points of Mr. Pierce's confirmation  
3 that are under discussion today?

4 Senator Petris.

5 SENATOR PETRIS: I'm curious about Mr. Guerra's  
6 testimony regarding his conversation with Ms. Chilton.

7 Did Ms. Chilton ever talk to you about that incident?

8 MR. PIERCE: No, Senator.

9 SENATOR PETRIS: Did you meet with her fairly frequently  
10 after that in your capacity as Department head?

11 MR. PIERCE: Senator, yes, on a daily basis, sometimes  
12 hourly. Our offices adjoined each other, and there was a  
13 connecting door. In State and Consumer Services is what we're  
14 talking about, and there's an office complex there.

15 SENATOR PETRIS: Mr. Garcia said that he had tried to  
16 get to see Ms. Chilton but he was always referred to you.

17 I failed to ask him if he actually went to see you or  
18 not. Did you have any conversations with Mr. Garcia about the  
19 incident in days after the meeting was over?

20 MR. PIERCE: No, I did not.

21 SENATOR PETRIS: Thank you.

22 CHAIRMAN ROBERTI: Does anyone else wish to testify on  
23 the two points under discussion regarding statements made at the  
24 meeting regarding homosexuals or gay people, or alleged  
25 intimidation by the Governor's Office against people who would be  
26 testifying here?

27

28



1 Any comments from the Members of the Committee? Any  
2 motion?

3 SENATOR PETRIS: I have another question.

4 CHAIRMAN ROBERTI: Senator Petris.

5 SENATOR PETRIS: Is it possible that in the aftermath of  
6 the meeting, nobody's told us and we haven't asked, how long did  
7 that meeting go on the subject of AB 1? There was a time, I  
8 know, when people felt they were saturated with the debate on  
9 that, certainly Legislators were.

10 What I want to ask you is, is it possible that a  
11 statement like that attributed to you could have been made as Mr.  
12 Guerra said probably when the meeting was over and people were  
13 just milling around getting ready to leave, as -- well, as  
14 Senator Craven asked -- as maybe in jest, without any serious  
15 intention of solving the problem in that way?

16 MR. PIERCE: That's the question, Senator?

17 SENATOR PETRIS: The question is, is it possible you  
18 could have said something like that at the end of the meeting in  
19 jest?

20 MR. PIERCE: Senator, to the best of my recollection, I  
21 certainly don't make statements like that in jest. I take -- you  
22 know, AB 1 was a serious piece of legislation, and certainly  
23 there is an executive order in state government that covers state  
24 employees.

25 As I said before, violence -- I abhor violence. I've  
26 been in law enforcement too many years and seen too much of it.  
27 And certainly you don't make, you know, those type of statements  
28

1 are just -- aren't in my character. I have a number of people  
2 that could bring forward today that would say the same thing.

3 You have to be, you know, one has to be quite -- quite  
4 careful what one says because there are always someone that will  
5 quote you or misquote you, or misunderstand you. And I've tried  
6 my best over a number of years to ensure that I was properly  
7 understood.

8 And statements like that, even taken out of context,  
9 would be a far cry from what I would ever say.

10 SENATOR PETRIS: Thank you.

11 CHAIRMAN ROBERTI: The issue is before us. Do I hear a  
12 motion?

13 SENATOR MELLO: Mr. Chairman, before we have a motion --

14 CHAIRMAN ROBERTI: Senator Mello.

15 SENATOR MELLO: -- I'd just like to make a brief  
16 statement and say that this has been a very difficult hearing  
17 from my perspective in that we're trying to seek out the truth  
18 and see what has happened here.

19 The difficulty I'm having, I don't think that those  
20 opposing you, Mr. Pierce, have gone -- and I'll use the term  
21 "beyond a reasonable doubt", which is conclusive evidence that  
22 these statements were in fact made. I think they didn't go that  
23 far to proving that point.

24 But I think serious doubt has been raised by at least  
25 two persons here today under sworn statements and one affidavit  
26 that these statements were in fact made, according to their  
27 testimony.  
28

1           And I think too often statements that are made at the  
2 Tuesday night poker club, in jest among a group of men usually,  
3 are in poor taste, as far as I'm concerned, but those kind of  
4 statements really don't belong in government at all, if they were  
5 said or not said.

6           What we've seen lately are probably half a dozen cases  
7 that have come before this Committee where these allegations have  
8 been made very strongly. And the difficulty that I'm having is  
9 to, you know, if Mr. Pierce's name goes out on the Floor, that's  
10 fine, we can take it up there.

11           I have a difficult time in putting my stamp of approval  
12 on this confirmation here today until we can really clear up --  
13 and I know the time is short -- I don't know whether we can clear  
14 up whether or not, where the truth lies.

15           If it is true that these statements were made, then  
16 certainly I would say you're unfit to serve in this capacity. If  
17 they were not made, then certainly the case has not been made.

18           But I'm in serious doubt myself at this point. I'm  
19 having great difficulty with this.

20           I'd hate to have to face a lot of people who might think  
21 that serious doubt has been raised as to your qualifications  
22 because of these statements and allegations that were made and  
23 perhaps have not conclusively been proven.

24           Thank you.

25           SENATOR DOOLITTLE: I move confirmation, Mr. Chairman.

26           CHAIRMAN ROBERTI: Senator Doolittle moves confirmation.

27           On the motion, I'd just like to speak to the motion.  
28



1           If the statements indeed were made it's, in my mind,  
2 grounds for nonconfirmation, possibly absent a clear change of  
3 heart and an apology.

4           That isn't the issue we have before us. We have the  
5 issue before us of whether the statements were made at all.

6           I share Senator Mello's concern that we just don't know.  
7 This is about as tough a confirmation hearing as I have ever sat  
8 through.

9           On the one hand, we don't want to even give the  
10 appearance of acquiescence to these kinds of statements. On the  
11 other hand, we don't want to give the appearance of deprecating  
12 somebody's service to the state if the statements were not made.

13           I have to weigh, I would say, the preponderance of the  
14 evidence, and it is very close in my mind at this juncture,  
15 January 28th of 1987.

16           I tend to think that the best discretion is to hold the  
17 confirmation in Committee at least for now. We have, I take it,  
18 until February 13th for final action, and I'm making the  
19 statement as to my own personal disposition today, right now.  
20 I'm not asking other people to follow my judgement because this  
21 is a very difficult call.

22           SENATOR CRAVEN: Mr. Chairman.

23           CHAIRMAN ROBERTI: Senator Craven.

24           SENATOR CRAVEN: I think that it's very, very difficult  
25 to talk about the statement in one respect because in so doing,  
26 you are implying that Mr. Pierce in fact made the statement. I  
27 am not convinced that he did.  
28

1 I think that that's a very, very fragile premise as to  
2 which side is correct and which side is not.

3 But if you were to assume that a statement was made, and  
4 you attribute that statement to Mr. Pierce, then I think you have  
5 to look at the significance of that statement and what  
6 consequence may befall all those who fall under its edict.

7 I think that, with due respect for all persons who may  
8 be affected by that, it is to me making a mountain out of a  
9 molehill.

10 I said to Senator Petris during the break, "How many  
11 times, Nick, have you heard even some of our colleagues say, 'You  
12 ought to take all those environmentalists and drive them over a  
13 cliff into the ocean.'"

14 Now, do you think for a moment that the person who said  
15 that really had an idea that they were going to round them up and  
16 drive them into the sea? I don't think that they had that idea  
17 at all.

18 But at certain times when people think they're under  
19 stress, and they are angered, perhaps they are inclined and have  
20 a tendency to say things that seem to assuage their feeling, or  
21 perhaps even their conscience.

22 I don't think that glib remarks are something that  
23 people should make in any respect, whether they hold a high  
24 office in the government or any place else, but they are done.  
25 And perhaps all of us in our respective careers and lives have  
26 had a tendency to say things that they wish they had not said.

27 I think that no great damage --  
28

1 CHAIRMAN ROBERTI: Only once a day.

2 (Laughter.)

3 SENATOR CRAVEN: Well, I think that if you look at this,  
4 and you try to distill it, you say, well, you know, that, if  
5 uttered, that was a very untoward remark. There's no question  
6 about that. I don't care to whom it applied. It just was a  
7 very, very untoward remark.

8 But is it sufficient in your judgment to ruin the  
9 20-year laudatory career of a public servant who has received  
10 compliments for his work throughout? There is nothing that in  
11 any way scratches or blemishes the escutcheon which he holds, and  
12 based on former, prior service, he is obviously well-qualified  
13 because if he were not, he would not be in the position he sits  
14 today.

15 So I would say that we should look at this thing with  
16 some degree of common sense as well as, perhaps, compassion, and  
17 perhaps also see ourselves in the same position if someone  
18 somewhere along the line had decided to challenge us.

19 So I am going to be supportive of the motion, and I  
20 would urge my colleagues to give my comments some thought.

21 CHAIRMAN ROBERTI: I agree with everything you've said,  
22 Senator Craven. That's why I added the point that my feeling  
23 right now today is that I guess I'll tolerate in my own mind --  
24 and I'm not making a judgment right now as to whether or not the  
25 statements were made because I cannot categorically say so, I can  
26 just say what I think today, what my feeling is, and I could be  
27 wrong -- is that I will tolerate many statements. When it's made  
28



1 in an official capacity or quasi-official capacity as opposed to  
2 the Monday night poker game, I think there is a difference. Not  
3 that it's a great thing to say at the Monday night poker game,  
4 but in my mind it is a difference.

5 And as I can glean it, this appeared to have been a  
6 statement made, or allegedly made -- I'm still going to say that  
7 -- in regular meetings of department personnel to discuss  
8 business, and in fact, it has its own abbreviated nomenclature,  
9 HMOs, or PQPs, or something like that -- MBOs. That's one point.

10 And number two point, since we are all terribly  
11 fallible, I would say that most statements I would feel with a  
12 change of heart and an apology, and I recall that we did  
13 something along those lines with Mr. Briner, although it didn't  
14 appear there was a real change of heart, nevertheless I'm not  
15 inclined to be all that terribly hard-nosed about it.

16 Once again, I'm talking speculatively because I'm not  
17 absolutely sure what went on at that meeting. I wish I were a  
18 fly on the wall that day and we would have known, but I wasn't.

19 So, the best right now I can do is just articulate my  
20 point of view.

21 I would say in official context is a little bit  
22 different than the Monday night poker meeting.

23 SENATOR CRAVEN: I don't know, Mr. Chairman, that we  
24 have established that it was done with any aura of official --

25 CHAIRMAN ROBERTI: If done, if done.

26 SENATOR CRAVEN: I will say this, Mr. Chairman, based on  
27 your comment, since I enjoy a very close relationship with you by  
28

1 virtue of our respective positions, the next time you say  
2 something to me as you refer to some of your colleagues who have  
3 displeased you or created some degree of discomfiture, I will  
4 remind you of your remark.

5 (Laughter.)

6 CHAIRMAN ROBERTI: That's why I'm suffering through this  
7 meeting --

8 (Laughter.)

9 CHAIRMAN ROBERTI: -- as much as anybody is, because I  
10 mean, there's not a one of us who doesn't say something.

11 The alleged remark, however, was somewhat of a quantum  
12 leap. It was a tough, tough remark, let's put it that way.

13 Senator Petris.

14 SENATOR PETRIS: It's obvious that everybody's -- we're  
15 all wrestling here with our conscience. It's a very tough thing.

16 All the reports I've heard about Mr. Pierce -- I had  
17 individuals stop me in the hallway and support him very strongly.  
18 We've had other support that was indicated here. And it appears  
19 he's a man of great talent, has done a very good job through the  
20 years.

21 The problem as I see it -- first of all, I'm not  
22 prepared to support confirmation today. I feel the same way as  
23 Senator Roberti and Senator Mello.

24 There are a couple of things I wanted to say. First, if  
25 the incident happened, and I was very impressed by what Mr.  
26 Guerra had to say, after all, he's a high official, he was frank  
27 and honest, and I found him to be that way in dealing with him on  
28

1 housing matters. I've had one long very frank discussion with  
2 him where he could have copped out and made excuses and done this  
3 and that on certain policy things, and he didn't. He gave me the  
4 bad news. He didn't try to gloss it over. And I admire that.

5 And it's uncomfortable for him just as much as it is for  
6 us to be hauled in here and asked about this and that.

7 But if the statement was made, Mr. Guerra heard it. Why  
8 would he lie to us? Why would he lie to us? He's an honorable  
9 man.

10 So if it was made, then it's denied under oath, that  
11 raises other questions that haven't been brought up here.  
12 There's a question of the image of the public servant; one is  
13 that.

14 The other is on the discrimination-type thing. Now,  
15 this doesn't apply to all minorities, but it applied, if made, to  
16 one particular minority.

17 We're living right now in an increasingly ugly period in  
18 our society. We saw what happened down in Georgia; we saw what  
19 happened in New Jersey or New York, where one person was killed  
20 by a car being chased by others.

21 There's enormous increase, according to the Attorney  
22 General, in the past few years in racial incidents in California,  
23 to say nothing of the rest of the country. Part of it comes from  
24 the climate that's created by people on top.

25 I saw a program yesterday speculating on how much of the  
26 resurgence of this feeling in Georgia and the things that  
27 happened there during that march are due to official government  
28 policy.



1           Now let's face it. President Reagan electrified the  
2 nation and brought a lot of smiles when he had, sitting upstairs  
3 in the gallery in one of his speeches to Congress, a Mexican-  
4 American veteran, recently returned from some kind of extensive  
5 service in the Army, maybe it was Vietnam or someplace, highly  
6 decorated. And rightfully he pointed to him in the gallery and  
7 told the whole nation how proud we are of this Mexican-American,  
8 which is great.

9           At the same time the President orders affirmative action  
10 law suits to be filed destroying the program, which could well  
11 deprive that Mexican-American and his family of programs that  
12 we've established and have fought for for years. That's the  
13 contradiction.

14           On the one hand, you can pat a G.I. on the back, and  
15 everybody loves him whether he's Mexican, or Irish, or anything  
16 else. On the other hand, you have a policy that goes contrary to  
17 the spirit that the President's trying to foster.

18           So we have encouragement from high places, and maybe  
19 some people down below feel, well, it's okay now. We can go back  
20 to our good-old-boy thinking. And there's an increase in  
21 disparaging remarks; there's an increase in conduct that is  
22 anti-just and antisocial and so forth.

23           So, if we finally conclude -- I don't know what we're  
24 going to conclude, one way or the other -- but if we conclude the  
25 statement was made, it's doubly unfortunate because of the trend.  
26 The stakes are high, and I need to be very clear in my mind that  
27 it absolutely wasn't made.  
28

1 I was kind of hoping maybe Mr. Pierce remembered, "Oh,  
2 yeah, I threw that out, but that, gee whiz, who the heck's going  
3 to believe that? It wasn't intended for that."

4 We've all made statements that we don't mean, as Senator  
5 Craven said. He's absolutely right on that. We've all made  
6 statements that are highly exaggerated to prove some little  
7 point.

8 But when you're in certain positions, you can't do that.  
9 The stakes are too high for all of us.

10 So that's why I hesitate. I hesitate to say I'm going  
11 to vote for confirmation. I can't do it right now even though  
12 there's a very enviable record of public service over these 20  
13 years, you know, with some very good commendations and support.

14 So maybe if we deferred this a little bit longer we can  
15 work out a solution. Ultimately we're going to have to face it  
16 and say yes or no, I realize that.

17 CHAIRMAN ROBERTI: There is a motion before us. We can  
18 vote on the motion.

19 If the motion fails, that does not mean the issue is not  
20 before us.

21 SENATOR PETRIS: We can bring it up again?

22 CHAIRMAN ROBERTI: Yes, we could still bring up another  
23 motion by any Member between now and February the 13th.

24 So, Senator Doolittle's motion is before us. Secretary  
25 will call the roll.

26 SECRETARY WEBB: Senator Doolittle.

27 SENATOR DOOLITTLE: Aye.  
28

1 SECRETARY WEBB: Senator Mello. Senator Petris.  
2 Senator Craven.

3 SENATOR CRAVEN: Aye.

4 SECRETARY WEBB: Senator Roberti.

5 CHAIRMAN ROBERTI: There are two votes in favor of the  
6 motion which is insufficient to pass it.

7 Do I hear another motion? Hearing none, the matter of  
8 Mr. Pierce's confirmation is still before the Committee and can  
9 be brought up between now and February 13th.

10 We will go in recess for five minutes. Without  
11 objection, such will be the order.

12 (Thereupon this portion of the Senate  
13 Rules Committee hearing was terminated  
14 at approximately 3:40 P.M.)

15 --oo0oo--  
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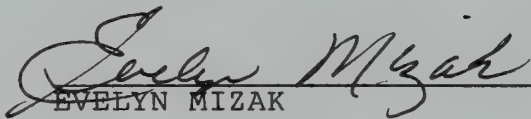
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

30<sup>th</sup> day of January, 1987.

  
EVELYN MIZAK  
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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

NONE

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

JOSEPH D. CARRABINO, Ph.D., Member  
State Board of Education

ROBERT B. MURPHY, Member  
Youthful Offender Parole Board

TERRI L. ASANOVICH, Member  
Board of Behavioral Science

DEBORAH CARONA, Member  
Board of Behavioral Science

KAREN M. COGHILL, Member  
Board of Behavioral Science

DARLA MOE, Public Citizen  
Citrus Heights





# I N D E X

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
JOSEPH D. CARRABINO, Ph.D., Member State Board of Education	1
Motion	1
Questions by SENATOR PETRIS re:	
Tenure on Board	1
Education Budget	2
Study on Expenditure Effectiveness	3
Class Size	5
Responsibilities of Board	6
Textbook Selection	6
Teacher Qualification and Discipline	6
School Boundary Redistricting	8
Public Education Policy	9
Committee Action	10
ROBERT B. MURPHY, Member Youthful Offender Parole Board	
Question by SENATOR CRAVEN re:	
Present Term as Police Chief	11
Questions by SENATOR PETRIS re:	
Effective Rehabilitation Programs	11
Overcrowded Facilities	13
Petriss Bill re: County Operations	13
Evaluation of Camps	14
Alumni Tracking	15
Role Models	15





I N D E X (Continued)

	<u>Page</u>
Motion	16
Committee Action	16
TERRI L. ASANOVICH, Member Board of Behavioral Science	17
<u>Witness in Support:</u>	
DARLA MOE, Private Citizen Citrus Heights	17
Questions by CHAIRMAN ROBERTI re:	
Managing Board Duties	19
Equivalent Degrees	20
Delays	21
Motion	21
Committee Action	22
DEBORAH CARONA, Member Board of Behavioral Science	22
Motion	22
Questions by CHAIRMAN ROBERTI re:	
Important Issues	23
Board Criteria for Licensing	23
Equivalency Degrees	24
Backlog	24
Committee Action	25
KAREN M. COGHILL, Member Board of Behavioral Science	25
Motion	25
Questions by CHAIRMAN ROBERTI re:	
Major Issues	25
Delays	26
Busiest Times	27



I N D E X (Continued)

	<u>Page</u>
Number of Applications	27
Reciprocity	28
Committee Action	29
Termination of Proceedings	30
Certificate of Reporter	31





P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Senator Craven, I'm going to turn the gavel over to you for a couple of minutes for the Governor's Appointee Dr. Joseph D. Carrabino, Member of the State Board of Education.

Dr. Carrabino is an outstanding Member of the California community whom I'm happy to know.

Senator Craven, I'm going to turn the Chair over to you, however, while I meet with a couple of constituents.

SENATOR CRAVEN: Very well.

Dr. Carrabino, we'll ask you as we ask all of the Governor's nominees as to why you think you're qualified to hold this position?

DR. CARRABINO: Well, I've been in education at the university level for about 35 years. We've also managed to raise six children and have had experience with a variety of schools, and I've become aware of the problem areas in our school system.

I also have -- I've always had an interest in education. I would say it is the one area of professional activity where I have the most interest.

SENATOR CRAVEN: Thank you.

Any questions in the audience? None.

Do I have a motion?

SENATOR ELLIS: Move the appointment.

SENATOR CRAVEN: Very well.

SENATOR PETRIS: How long have you been on the Board?



1 DR. CARRABINO: Ten months.

2 SENATOR PETRIS: We have some suggested questions here.  
3 I kind of hesitate, but you're sitting in the hot seat there as a  
4 Member of the Board with a big battle going on in the State now  
5 over how much more we ought to have for education, if any, and  
6 whether there should be a refund.

7 Does the Board get into that in its meetings?

8 DR. CARRABINO: Our Board does not have any jurisdiction  
9 over budgets. We do not work on the department budget. That's  
10 Mr. Hoenig and his staff.

11 I'm looking at it, you know, and making a study.

12 SENATOR PETRIS: But I'm Mr. John Q. Public out there,  
13 and I see your name up there on the Board of Education. I'm  
14 going to want to ask you why don't we get more money for schools,  
15 especially K-12? Or I might say you're giving them too much  
16 money for schools, meaning the State.

17 I don't think it's really a remote subject --

18 DR. CARRABINO: No.

19 SENATOR PETRIS: -- for people on your Board.  
20 Officially I guess it's not on your agenda, but --

21 DR. CARRABINO: That's right.

22 SENATOR PETRIS: Is the issue itself discussed maybe at  
23 the invitation of the Superintendent or the initiative of any of  
24 the Members? Do you get into that at all?

25 DR. CARRABINO: It has not been on our agenda. We  
26 discuss it informally as individuals, but it's not on our agenda.  
27 We have no jurisdiction on that.





1 SENATOR PETRIS: Not as part of your meeting?

2 DR. CARRABINO: No.

3 SENATOR PETRIS: But you do make recommendations though  
4 on things from time to time; don't you?

5 DR. CARRABINO: Informally. We've had no official  
6 agenda items on that issue. We have, you know, many other areas,  
7 but since we're not in on the -- we have no jurisdiction on the  
8 budget in the first place, it's very hard to take a position on  
9 it.

10 Now, you know, my own feeling about what I'm trying to  
11 do on the Board is to get a better feeling on how we're using the  
12 money which is allocated; in other words, the effectiveness of  
13 these expenditures. I'm going to concentrate in that area.

14 SENATOR PETRIS: Have you found out anything so far?

15 DR. CARRABINO: Well, there's always room for  
16 improvement. My feeling is that there are some areas where I  
17 think we could make more effective use, but it'd be premature for  
18 me to make public statements now. I'm doing a study and --

19 SENATOR PETRIS: Is that your own study or is --

20 DR. CARRABINO: Yes.

21 SENATOR PETRIS: -- that a subcommittee?

22 DR. CARRABINO: My own.

23 SENATOR PETRIS: On your own?

24 DR. CARRABINO: I'm a professor of management. I've  
25 done a number of management audits in a variety of organizations,  
26 so I'm trying to get a feeling for the operation of the various  
27 institutions.  
28



1           SENATOR PETRIS: And how are you doing that? Are you  
2 selecting at random various school districts?

3           DR. CARRABINO: I do that; I go to conventions; I  
4 interview people. I'm going to more formally -- I initially  
5 exposed myself to as many groups as I could, and I'm in the  
6 process of laying out a formal study.

7           A year from now I'll be better equipped to answer this  
8 question, I hope.

9           SENATOR PETRIS: Yes, and if we get the wrong answer  
10 then we may not vote yes.

11          DR. CARRABINO: I know.

12          SENATOR PETRIS: You're in a little bind here.

13          Well, you know, I come from a metropolitan area, the  
14 city of Oakland, that has the type of school district make-up  
15 which is getting the brunt of most of the problems in our  
16 society.

17          DR. CARRABINO: I know.

18          SENATOR PETRIS: And it just seems like there are not  
19 very many of them that can be solved without hiring people with  
20 special talents, and you can't hire them without money. Then you  
21 run into critics who say, "Well, you can't solve the problem by  
22 throwing money at them."

23          I don't know of very many that have been solved without  
24 money.

25          DR. CARRABINO: Right, that's right.

26          SENATOR PETRIS: You know, we have the special need  
27 formula and the urban factor, which I authored and carried for  
28





1 years, and a bunch of other things that are enabling them to be  
2 hanging on by their fingernails.

3 So the people I talk to in the city where I live are  
4 desperate for more money for schools. And although that's not in  
5 your jurisdiction directly, I just wonder if those voices reach  
6 you as a Board Member?

7 DR. CARRABINO: Well, Senator, by coincidence --

8 SENATOR PETRIS: From my area and others similarly  
9 situated around the state.

10 DR. CARRABINO: Well, by coincidence I have a daughter  
11 who's a Catholic nun who works in Oakland. She's with the  
12 Sisters of Social Service.

13 SENATOR PETRIS: Yes, I'm familiar with them.

14 DR. CARRABINO: So I have a lot of contact and I'm well  
15 aware of many of these problems.

16 I've also done work for the Port of Oakland so I know  
17 the community.

18 SENATOR PETRIS: Yes.

19 DR. CARRABINO: And I would agree with you.

20 SENATOR PETRIS: You agree we need a lot of help?

21 DR. CARRABINO: Yes, oh yes.

22 SENATOR PETRIS: Do you deal with the class size  
23 problem, or issue, I should say?

24 DR. CARRABINO: I'm -- that's part of my study.

25 SENATOR PETRIS: No, I mean as a Board.

26 DR. CARRABINO: No, no. You see, we can make  
27 recommendations.  
28



1           SENATOR PETRIS: What do you do?

2           DR. CARRABINO: We do a lot of other things.

3           SENATOR PETRIS: You don't go into the budget; you don't  
4 go into classroom size.

5           Let me start over and ask you what do you folks do up  
6 there?

7           DR. CARRABINO: Well, I tell you, one of the biggest  
8 problems, a lot of administrative issues. For example, the  
9 boundaries on school districts. There are about 1500 school  
10 districts, and there are people petitioning to change boundaries.  
11 There are people -- school districts that petition for waivers of  
12 requirements for different qualifications.

13           That takes a lot of our time. The preparation of the  
14 approval of textbooks. We're now in the middle of -- in fact  
15 today we're having a hearing on the social studies, the framework  
16 for the social studies textbooks.

17           SENATOR PETRIS: For what period of time? When you make  
18 a selection --

19           DR. CARRABINO: About six years; the average cycle is  
20 about six years in about six subject matter areas. So, one a  
21 year is revised and comes before the Board. We appoint a variety  
22 of commissioners, curriculum commissions and other specialized  
23 bodies that advise the Board.

24           Our textbook adoption program consumes a lot of time.

25           SENATOR PETRIS: And you have teacher qualification and  
26 discipline matters, too?

27

28





1 DR. CARRABINO: Yes, those matters, and any waivers from  
2 the requirements.

3 SENATOR PETRIS: Is the firing of incompetent teachers  
4 becoming more frequent now? I saw an article in the paper the  
5 other day in which a person who specializes in that is saying  
6 that it's a myth; all this talk all these years that it's  
7 impossible to fire an incompetent teacher; laid out a large  
8 number of examples where that had been done.

9 Is that an appreciable statewide change?

10 DR. CARRABINO: I haven't seen statistics on that  
11 because that would be part of a collective bargaining agreement.  
12 You have grievance procedures, and I don't think there's any  
13 uniformity on that. I have not seen any --

14 SENATOR PETRIS: Yes, but the ultimate appeal is to the  
15 State Board; isn't it?

16 DR. CARRABINO: No, not on discipline, no. We're not  
17 part of that.

18 SENATOR PETRIS: Doesn't the State Board conduct  
19 hearings on that?

20 DR. CARRABINO: We've never had a hearing on that in the  
21 ten months that I've been there. That's all handled at the local  
22 school board.

23 SENATOR PETRIS: I thought there was an appellate  
24 process to the State?

25 DR. CARRABINO: It has not come --

26 SENATOR PETRIS: It seems to me, as a lawyer about 100  
27 years ago, I defended a school employee before the Board or a  
28 Member of the Board or a committee of the Board.



1 DR. CARRABINO: We've had no such, as I say, in ten  
2 months I haven't -- I've been to all the meetings, so --

3 SENATOR PETRIS: In view of what we did a little while  
4 ago I guess I won't be able to represent anybody before a school  
5 board any more.

6 DR. CARRABINO: The lawyers are busy on the school  
7 redistricting, the boundaries.

8 SENATOR PETRIS: What is the reason for all that? Is  
9 that a money thing? Is that to expand usually to take in more  
10 revenue from more people?

11 DR. CARRABINO: No, I think what's happening, the  
12 demographics of neighborhoods are changing, and there are many  
13 reasons why people want to redraw the lines. For example, if you  
14 live in an affluent area, the younger people cannot afford these  
15 homes, so you have schools where the enrollments are very low.  
16 So, and then you have other districts where the schools are  
17 crowded. So there's an attempt to level out the distribution of  
18 students.

19 SENATOR PETRIS: How does that come to your attention?

20 DR. CARRABINO: They petition us.

21 SENATOR PETRIS: Is there a formal petition directly?

22 DR. CARRABINO: Yes, formally.

23 SENATOR PETRIS: It doesn't go through a local district?

24 DR. CARRABINO: It goes through a county level hearing  
25 and then comes to our Board. We have the final say on it. We  
26 have hearings, public hearings.

27 SENATOR PETRIS: Is that taking a lot of your time now?  
28





1 DR. CARRABINO: Yes, every meeting every month there are  
2 at least two of those on the agenda.

3 Like tomorrow morning, we have an administrative  
4 committee; there are two of them. Every -- the first day of our  
5 two-day meetings are committee hearings, and then the formal  
6 Board actions are on the second day. So, at least a half a day  
7 tomorrow is devoted to two hearings on that issue.

8 SENATOR PETRIS: Apart from selecting textbooks, you  
9 don't seem to be spending much time on school policy?

10 DR. CARRABINO: Well, we're --

11 SENATOR PETRIS: On public education policy, curriculum.

12 DR. CARRABINO: We're doing that now, you see. We've  
13 just prepared a statement of our objectives.

14 We inherited a structure that was rather -- well, the  
15 prior Boards had been taking a passive role. I think our group  
16 now is addressing some of these issues that are policy type  
17 issues. You'll more -- more policy statements.

18 SENATOR PETRIS: When is your study going to be  
19 released?

20 DR. CARRABINO: Well, I have a sabbatical leave. I'm  
21 due for one-year leave, and I hope at the end of the year I'll  
22 start --

23 SENATOR PETRIS: You're going to spend your sabbatical  
24 on that?

25 DR. CARRABINO: Yeah, I plan to. That will be my major  
26 activity, you know.

27 SENATOR PETRIS: That's quite a sacrifice.  
28



1 DR. CARRABINO: Well, I'm interested. I really am.

2 SENATOR PETRIS: A year from when?

3 DR. CARRABINO: From this July, July 1st, next month.

4 SENATOR PETRIS: This July.

5 DR. CARRABINO: Next month, yes.

6 SENATOR PETRIS: Thank you very much.

7 DR. CARRABINO: Thank you.

8 SENATOR CRAVEN: Any further questions?

9 I have a motion by Senator Ellis. Anyone in the  
10 audience wish to comment? There appears to be none.

11 Call the roll.

12 SECRETARY WEBB: Senator Ellis.

13 SENATOR ELLIS: Aye.

14 SECRETARY WEBB: Senator Mello.

15 SENATOR MELLO: Aye.

16 SECRETARY WEBB: Senator Petris.

17 SENATOR PETRIS: Aye.

18 SECRETARY WEBB: Senator Craven.

19 SENATOR CRAVEN: Aye.

20 SECRETARY WEBB: Senator Roberti. Four to zero.

21 SENATOR CRAVEN: Four to zero. Congratulations, Doctor.

22 DR. CARRABINO: Thank you, gentlemen.

23 SENATOR CRAVEN: Next is Robert B. Murphy, Member of the  
24 Youthful Offender Parole Board.

25 Mr. Murphy, we'll ask you as we did the doctor, please  
26 be seated, tell us why you feel you're qualified for this  
27 position.  
28





1 MR. MURPHY: Well, I have 60 years of life experience,  
2 38 of those in law enforcement during which I've had a lot of  
3 training both in law enforcement and corrections. I've kept  
4 myself abreast of conditions, techniques, practices as much as  
5 possible.

6 Since last October, I've been a member of the Board, and  
7 since March 31st, I've been Chairman of the Board, and I've been  
8 out there helping to do the job, and I enjoy it, think I'm well-  
9 qualified for it.

10 SENATOR CRAVEN: Very well.

11 You're also presently a chief of police; is that right?

12 MR. MURPHY: A retired chief.

13 SENATOR CRAVEN: How long have you been retired?

14 MR. MURPHY: October 5th of last year. And I served in  
15 three different police department the last 18 years as a chief.

16 SENATOR CRAVEN: Very well.

17 Do you have any questions of Mr. Murphy? Senator  
18 Petris.

19 SENATOR PETRIS: Yes, I'm interested in the camps;  
20 treatment programs in the Youth Authority institutions and camps.

21 Is there any rehabilitation going on that's really  
22 working?

23 MR. MURPHY: Yes.

24 SENATOR PETRIS: Which programs are the most effective  
25 in that direction?

26 MR. MURPHY: I think education within all of the  
27 institutions and employability skills training are -- those two  
28 probably do the most good.



1           SENATOR PETRIS: Where do they get that? Do they get  
2 that in the camps or in the other institutions?

3           MR. MURPHY: They get that in most all of the  
4 institutions.

5           SENATOR PETRIS: Is it compulsory? Do they all have to  
6 submit to some kind of formal educational activity?

7           MR. MURPHY: Under a certain age they're required to do  
8 education. They -- as a part of the program, they are offered  
9 employability training. I don't think that could be forced upon  
10 anyone. It's encouraged.

11          SENATOR PETRIS: I see. Do they get credit for that,  
12 time credit?

13          MR. MURPHY: No. No as a specific. It could count  
14 toward successful programming.

15          SENATOR PETRIS: But no time off?

16          MR. MURPHY: Right.

17          SENATOR PETRIS: Not part of that good behavior time off  
18 thing?

19          MR. MURPHY: That's right.

20          SENATOR PETRIS: Why not? Isn't that one of the top  
21 goals, to try to rehabilitate them through education?

22          MR. MURPHY: Yes, it is. And as I said, as a part of  
23 programming, they do get credit because if they're busy doing the  
24 things they should be doing while they're there, they do complete  
25 their programs faster, more successfully. In that sense it  
26 counts for credit, but not as it does in an adult prison.

27  
28





1           SENATOR PETRIS: But it would make an impression  
2 favorably on the Board when their parole time is up?

3           MR. MURPHY: Oh, yes.

4           SENATOR PETRIS: When they're up for consideration?

5           MR. MURPHY: Yes.

6           SENATOR PETRIS: As opposed to somebody who doesn't do  
7 anything.

8           MR. MURPHY: Very much so.

9           SENATOR PETRIS: Are all your facilities now full and  
10 overcrowded?

11          MR. MURPHY: They're all full and most of them are  
12 overcrowded.

13          SENATOR PETRIS: Most of them are bulging?

14          MR. MURPHY: Yes, sir.

15          SENATOR PETRIS: I have a bill effecting that by trying  
16 to beef up the county operations. In my county where I live,  
17 Alameda County, we have some very good programs, but we have a  
18 critical money shortage like everybody else does. My bill would  
19 require the State to pick up from its budget, meaning your shop,  
20 your department, pick up a certain percentage of the costs.

21                 Has that come to your attention?

22          MR. MURPHY: No.

23          SENATOR PETRIS: Well, your Board officially opposes it,  
24 I know that. And I don't blame them. They don't want money  
25 taken away, but it's the money following the individual; money  
26 they would be spending on new people coming in. Some of us would  
27 like to see that money spent in the county where they have good  
28 programs.



1 MR. MURPHY: Well, the Youth Authority would be more  
2 involved in planning of that sort than the Youthful Offender  
3 Parole Board.

4 Ours would be a cooperative role in helping to use  
5 whatever community facilities --

6 SENATOR PETRIS: Yes, you get them kind of at the tail  
7 end. You're not in on the annual programming and day-to-day  
8 activities anyway, are you, as a parole board?

9 MR. MURPHY: We're involved in the length of stay, where  
10 -- a recommendation on where they go, and the readiness for  
11 parole. So, the readiness for parole part of my answer is the  
12 tail end; the other part is the beginning.

13 SENATOR PETRIS: Yes, I made an error. I don't think  
14 it's the Offender's Parole Board that has taken the position;  
15 it's the Youth Authority.

16 How do you rate the camps? How long have you been on  
17 the Board? You were reappointed, so you've had several years.

18 MR. MURPHY: No, I was reappointed, but I have a total  
19 of eight months.

20 SENATOR PETRIS: I see.

21 What's your evaluation of the camps as a going mechanism  
22 for accomplishing the mission of the Youth Authority?

23 MR. MURPHY: I think they're good. They're learning how  
24 to work. A little bit of regimentation, a lot of regimentation  
25 for some. Learning how to do something and earn a living when  
26 their time is served and they're ready to go back in the  
27 community helps a lot.  
28





1           SENATOR PETRIS: Does your group track your alumni,  
2 other than saying hello again when they come back in?

3           MR. MURPHY: No, our Youthful Offender Parole Board does  
4 not. That information --

5           SENATOR PETRIS: Does anyone?

6           MR. MURPHY: The Youth Authority.

7           SENATOR PETRIS: The Youth Authority does?

8           MR. MURPHY: They have some information. I don't know  
9 how specific they could get in answering it, but I know there are  
10 answers, some answers.

11          SENATOR PETRIS: What I'm curious about is, I wonder if  
12 there are any reports, or publications, that circulate among the  
13 youthful offenders praising some graduates who have stayed out  
14 for x period of years and are doing tremendously well, and so  
15 forth, as holding them up as role models. People who've never  
16 come back, for example.

17          MR. MURPHY: Specifically, I don't know of any, but at  
18 some open houses at the different institutions I know there is a  
19 lot of attention paid by the Youth Authority to give credit to  
20 successful wards. And at YTS, for example, those who are  
21 successful in a certain educational program can take other wards  
22 with them to their graduation service to try to inspire those  
23 other wards to want to graduate also.

24          SENATOR PETRIS: I see.

25          MR. MURPHY: That's one example.

26          SENATOR PETRIS: Thank you.

27          Thank you, Mr. Chairman.  
28



1 SENATOR CRAVEN: Yes, sir.

2 Senator Ellis.

3 SENATOR ELLIS: Move the confirmation.

4 SENATOR CRAVEN: Senator Ellis moves.

5 Anyone in the audience wish to testify? There appears  
6 to be none.

7 Call the roll, please.

8 SECRETARY WEBB: Senator Ellis.

9 SENATOR ELLIS: Aye.

10 SECRETARY WEBB: Senator Mello.

11 SENATOR MELLO: Aye.

12 SECRETARY WEBB: Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Senator Craven.

15 SENATOR CRAVEN: Aye.

16 SECRETARY WEBB: Senator Roberti.

17 CHAIRMAN ROBERTI: Aye.

18 The vote's five to nothing; the confirmation of  
19 Mr. Murphy is recommended to the Floor do pass.

20 Congratulations.

21 MR. MURPHY: Thank you.

22 SENATOR CRAVEN: We are next at Item Five, Mr. Chairman.

23 CHAIRMAN ROBERTI: Item Five is Terri L. Asanovich,  
24 Member of the Board of Behavioral Science.

25 Ms. Asanovich, we'll ask you what we ask all the  
26 Governor's Appointees: Why you feel you're qualified to assume  
27 this position?  
28





1 MS. ASANOVICH: All right, sir.

2 I feel I'm qualified to assume this position as I have  
3 served for the last two years on this Board and have participated  
4 in clarifying various issues regarding due licensure for Marriage  
5 and Family Counselors, and also having a public record of service  
6 to basically strengthen the integrity of the licensing process,  
7 and also to aid in the public protection through working with  
8 various groups in enforcing standards that will protect the  
9 public.

10 CHAIRMAN ROBERTI: Thank you very much.

11 Is there anybody in support of the nomination? Is there  
12 any opposition in the audience.

13 FROM THE AUDIENCE: There is support, sir.

14 CHAIRMAN ROBERTI: Please come forward.

15 State your name and if you represent anyone other than  
16 yourself, so indicate.

17 MS. MOE: My name is Darla Moe, and I'm a citizen from  
18 Citrus Heights.

19 I have been working for the past two years with citizens  
20 in the community who are deeply concerned about any -- any trends  
21 toward circumventing laws that are already in place which protect  
22 the public from fraud and abuse in the counseling field.

23 As a result of my personal experiences working in this  
24 field at a local community hospital, I've become very active in  
25 attempting to see that we receive licensing requirements for  
26 people who are treating addictive disease and chemical  
27 dependency.  
28



1 I'm very supportive of Board Members -- current Board  
2 Members' concerns in the behavioral sciences area to take all  
3 possible precautions before passing out licenses in this area.  
4 We're deeply concerned that there are very, very few complaints  
5 regarding individuals who are applying for licensure as to the  
6 lack of responsiveness on the part of the Board, and there's much  
7 concern in the community regarding individuals who are not  
8 properly qualified to assist families in crises.

9 We support all of the current Board Members and urge  
10 their confirmation.

11 CHAIRMAN ROBERTI: Thank you very much.

12 Let me ask just a couple of questions, Ms. Asanovich.

13 In your position as a licensing board member, you're  
14 charged with the responsibility of carrying out B&P Code I think  
15 it's 101.6 to:

16 "... license persons desiring to engage  
17 in the occupations the Board regulates  
18 upon determining that such persons possess  
19 the requisite skills and qualifications  
20 necessary to provide safe and effective  
21 services to the public."

22 As the Chair of the Credentials-Qualifications Committee  
23 of the Board, you have a special responsibility to:

24 "... address issues relative to ac-  
25 creditation, curriculum, education and  
26 experience issues for Marriage, Family  
27 and Child Counselors, Clinical Social  
28





1 Workers, and Licensed Educational  
2 Psychologists."

3 I'd like to know roughly how you carry your duties out  
4 on the Board?

5 MS. ASANOVICH: Surely, sir.

6 What we do is, we have every-other month meetings where  
7 we review various curriculum issues that have come forward to our  
8 review. At that time, while we review the various educational  
9 backgrounds of the people that are there, their experience  
10 issues, and also what we have done before this, we have met with  
11 approximately 30-40 universities and numerous academicians  
12 throughout the last two years to develop prototypes for the  
13 programs that they have at their schools so that we know what  
14 they're doing as far as producing a therapist, and so that they  
15 have on record with us various information that would rend us to  
16 be able to correctly evaluate them.

17 CHAIRMAN ROBERTI: Two years ago there was a great deal  
18 of controversy over the Board's actions in re-evaluating and  
19 cutting back on the number of equivalent degrees for the Marriage  
20 and Family Counseling License.

21 I think we had a confirmation hearing for Sarah Flores,  
22 who was eventually reappointed to the Board on February 6th.

23 Do you feel that the Vasconcellos bill signed into law  
24 last year and this year's AB 661 by Assemblyman Vasconcellos have  
25 fulfilled that stated goal of providing:

26 "solid and credible professional  
27 training while allowing for in-  
28



1           novation, individuality, and ever-  
2           expanding knowledge of effective  
3           therapeutic modalities?"

4           I remember Ms. Flores' confirmation especially was  
5           controversial because many people felt that that was not  
6           occurring.

7           MS. ASANOVICH: At that time, sir, when Sarah came  
8           through, at that time it was a very crisis point for our Board.

9           We had discovered that there were a great number of  
10          people coming through with equivalent degrees and not that which  
11          was stated in law. On the advice of legal counsel, we were told  
12          that we did not have the authority to grant equivalency status to  
13          these people and that we had to follow the letter of the law.  
14          So, we were thrown into a very serious crisis.

15          What we were able to do was review those people, and  
16          basically review them against the ten course content areas so  
17          that they would get the best chance possible so that they could  
18          qualify for licensure.

19          Most of those people were allowed to sit for examination  
20          and subsequently have received licenses.

21          Currently, with the Vasconcellos bill, that has  
22          clarified a great number of issues for us, and it has really  
23          facilitated our working with the universities and the other  
24          applicants, and for the most part it seems to be working very  
25          well for everyone.

26          Also, it allows for great academic freedom in the sense  
27          that it covers kind of a broad range of areas but allows  
28





1 universities and the colleges to establish their own course  
2 titles, and they're emphasizing their own areas in a little bit  
3 more freedom, sense of freedom, to be able to do this, to  
4 construct their programs while covering certain areas.

5 CHAIRMAN ROBERTI: I remember the Flores hearing. There  
6 were some concerns that there were interminable delays, or some  
7 people complained of that.

8 Has the Board been able to put that problem to rest?

9 MS. ASANOVICH: Yes, we are working on that. We have  
10 done as much as we can for that process at this point. We have  
11 initiated regulation changes so that we can change the final  
12 filing date to 90 days beforehand for the exam, so it'll give  
13 staff a greater time to review the applications and get them out  
14 in a much more timely manner.

15 Right now we're currently set with that regulation, but  
16 we're working on getting that changed.

17 CHAIRMAN ROBERTI: Very good.

18 Any other questions?

19 SENATOR CRAVEN: Move.

20 CHAIRMAN ROBERTI: Senator Craven moves that Terri  
21 Louise Asanovich's confirmation as a Member of the Board of  
22 Behavioral Science be recommended to the Floor.

23 Secretary will call the roll.

24 SECRETARY WEBB: Senator Ellis.

25 SENATOR ELLIS: Aye.

26 SECRETARY WEBB: Senator Mello. Senator Petris.  
27 Senator Craven.  
28



1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote is three to nothing; confirmation is  
5 recommended to the Floor.

6 Congratulations.

7 MS. ASANOVICH: Thank you.

8 CHAIRMAN ROBERTI: The next appointment is Deborah  
9 Carona, Member of the Board of Behavioral Science.

10 Ms. Carona, we'll ask you the same question we asked  
11 Ms. Asanovich, and that is why you feel you're qualified to  
12 assume this position?

13 MS. CARONA: First of all, I'm a public member so I  
14 don't hold a license. I feel that one of my main  
15 responsibilities as a public member is to ensure to the public's  
16 safety.

17 I am a probation officer by occupation. I feel that  
18 that legal background has helped me, particularly as I sit as  
19 Chair of the Ethics Committee. And I feel that my legal  
20 background is helping in standardizing disciplinary guidelines  
21 for the profession.

22 CHAIRMAN ROBERTI: Very good.

23 Is there support or opposition in the audience.

24 SENATOR CRAVEN: Move Ms. Carona.

25 CHAIRMAN ROBERTI: Senator Craven moves Ms. Carona's  
26 confirmation be recommended to the Floor.

27 Let me ask you a couple questions.  
28





1           What do you feel are the more important issues that are  
2 facing the Board today?

3           MS. CARONA: At this point with the Vasconcellos bill, I  
4 feel that getting that into motion and getting the word out is  
5 very important.

6           Again, there's one big issues we're dealing with now,  
7 the sexual abuse from the therapist. I feel, especially in my  
8 committee, to take a look at that, to work with the legislative  
9 task force on that.

10           Also, we spend a great deal of time working with the  
11 MFCC licenses, and we also license two other people, that being  
12 Clinical Social Workers and Educational Psychologists. And I'm  
13 hoping that we can work with them over the next few years also.

14           CHAIRMAN ROBERTI: What criteria is the Board using to  
15 make sure somebody fulfills the specification that the person  
16 possesses the requisite skills and qualifications necessary to  
17 provide safe and effective service to the public?

18           That's pretty nebulous and that's the statute, but what  
19 criteria do you use to tighten that statute up?

20           MS. CARONA: I'm not exactly sure of the question.

21           By law we have certain criteria people have to meet,  
22 including course content, course titles, supervision hours, et  
23 cetera.

24           The staff has -- the staff evaluates applications that  
25 sit for the exam. We have -- I don't sit on it, but there's a  
26 Credentials-Qualifications Committee that, if there's any  
27 questions, review those applicants and see if they're qualified  
28 to sit for the exam.



1 CHAIRMAN ROBERTI: Have you found that the Vasconcellos  
2 bills, as far as equivalency degrees, have helped the Board?

3 MS. CARONA: I think the Vasconcellos bill's been  
4 excellent for the Board. It just puts everybody on notice what  
5 is required and what is needed.

6 I think that before there was some ambiguity as to what  
7 exactly -- what degrees were wanted, and I think the Vasconcellos  
8 bill has given everybody a real good, firm setting to comply  
9 with.

10 CHAIRMAN ROBERTI: Have you sensed that the backlog of  
11 the Board processing cases has been alleviated?

12 MS. CARONA: Correct. We're hiring more staff. Again,  
13 it's just as Ms. Asanovich mentioned, we're hoping to have the  
14 90-day filing date; we're working and trying to get that now into  
15 regulation. That will really help in the backlog because with so  
16 many applicants, and with 60 days and the staff we have, it's  
17 sometimes mind boggling.

18 CHAIRMAN ROBERTI: Very good.

19 Any other questions?

20 Senator Craven moved Ms. Carona's confirmation be  
21 recommended to the Floor.

22 Secretary will call the roll.

23 SECRETARY WEBB: Senator Ellis.

24 SENATOR ELLIS. Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris. Senator Craven.  
28





1 SENATOR CRAVEN: Aye.

2 SECRETARY WEBB: Senator Roberti.

3 CHAIRMAN ROBERTI: Aye.

4 The vote is four to nothing; confirmation is recommended  
5 to the Floor.

6 MS. CARONA: Thank you.

7 CHAIRMAN ROBERTI: The next confirmation is Karen M.  
8 Coghill, Member of the Board of Behavioral Science.

9 We'll ask you the same question: Why you feel you're  
10 qualified to assume this position?

11 MS. COGHILL: I am a professional social worker and have  
12 a 25-year record of increasingly responsible professional  
13 demonstrated responsibility in leadership both on the job and in  
14 my community activities and professional activities.

15 CHAIRMAN ROBERTI: Is there any further discussion or  
16 debate? Is there any opposition or support in the audience?

17 SENATOR CRAVEN: Move Ms. Coghill.

18 CHAIRMAN ROBERTI: Senator Craven moves Karen Coghill's  
19 appointment to the Board of Behavioral Science Examiners be  
20 recommended to the Floor.

21 Just a couple questions of you as well.

22 What are the issues that you think are currently facing  
23 the Board that are of major consequence?

24 MS. COGHILL: Well, clearly the Vasconcellos bill has  
25 helped us tremendously in clearing some of the ambiguity around  
26 the MFCC licensures, and now we're addressing that same process  
27 in SB 1030 for the social workers. When we have completed that  
28 the next task will be to look at the educational psychologists.



1           It is our intent to work cooperatively with the  
2 legislative committee around the sexual activity between  
3 psychotherapists and their clients. These are all things that we  
4 need to address and are current issues.

5           CHAIRMAN ROBERTI: I'll ask you the question that I  
6 think came up in the last hearing, and I recollect it primarily  
7 from Ms. Flores' confirmation hearing.

8           That was, a great deal of concern and probably as many  
9 letters as I've ever received on a confirmation, and I eventually  
10 voted for Sarah Flores because I think she's very qualified to  
11 assume the position; however, many people indicated frustration  
12 to us because of the delays in receiving the Marriage and Family  
13 Counseling License, I guess that's the title for it, and also the  
14 Licensed Clinical Social Worker. And there was probably even  
15 greater concern that people felt they weren't allowed to take the  
16 exam.

17           What's the staff process now that you go through? I  
18 take it the Vasconcellos legislation has helped, but are there  
19 any regulations that you proceed through to expedite the process?  
20 Do you feel that that has happened?

21           MS. COGHILL: Clearly there are some particularly busy  
22 times of year when applications come in prior to examination.  
23 The number of applicants candidates for licensure has increased,  
24 and the time frame in which it is possible to process those  
25 examinations is quite limited. So, this puts a lot of stress on  
26 staff, and we are making efforts to deal with that.





1 I don't know how else to respond to your comment. I  
2 think it's better than it was.

3 CHAIRMAN ROBERTI: What are the busy --

4 MS. COGHILL: The busy times?

5 CHAIRMAN ROBERTI: -- when you have disproportionate  
6 numbers of applications?

7 MS. COGHILL: In the time frame between the date of  
8 application deadline and when applicants need to be notified  
9 whether or not they are qualified to sit for the exam based on  
10 the application, or whether or not there are things that need to  
11 be completed on the application if it's not -- if it's deficient  
12 in some manner, which may be a matter for them of just getting  
13 more information in.

14 CHAIRMAN ROBERTI: How many licensed Clinical Social  
15 Workers applications do you receive?

16 MS. COGHILL: I don't think I can answer that.

17 CHAIRMAN ROBERTI: The same for Marriage and Family  
18 Counseling?

19 MS. COGHILL: No, I think it varies, and the number has  
20 been escalating.

21 CHAIRMAN ROBERTI: So every year it does increase  
22 somewhat?

23 MS. COGHILL: Uh-huh.

24 CHAIRMAN ROBERTI: Another issue that's important is the  
25 issue of reciprocity, whether to accept the license granted by  
26 another state that uses similar kinds of qualification  
27 procedures. It's an issue that's faced by all California  
28 licensing boards.



1           How has your Board dealt with these people who have  
2 licenses from other states? What are the criteria we use for  
3 reciprocity?

4           MS. COGHILL: At the present time I'm not sure that  
5 there's any authority for reciprocity. It's something that we're  
6 looking at in a couple of methods.

7           To begin with, we have recently joined the American  
8 Association of State Social Work Boards which is a national group  
9 with representation from states with licensure. And there is  
10 active involvement on the part of the Board in the formation of a  
11 similar group for Marriage Family and Child Counseling  
12 nationwide. This would obviously be the first step toward that  
13 kind of reciprocity.

14           It's a very complicated issue, however, because the  
15 licenses are not necessarily equivalent in terms of the  
16 qualifications educationally and/or in experience and supervision  
17 towards licensure, much less the exam.

18           In social work, we're looking toward using a national  
19 examination, and that would certainly help also.

20           CHAIRMAN ROBERTI: Right now is the national examination  
21 which you're going to be using comparable to ours, or does the  
22 Board have the wherewithal or the authority to go to other states  
23 where there are sizeable numbers of applicants in California to  
24 see what --

25           MS. COGHILL: That dialogue is occurring through those  
26 associations.  
27  
28





1 CHAIRMAN ROBERTI: I guess that's all that I have as far  
2 as questions.

3 Any other questions?

4 Senator Mello moved Ms. Coghill's nomination --

5 SECRETARY WEBB: It was Senator Craven.

6 CHAIRMAN ROBERTI: I'm sorry, Senator Craven moved --

7 SENATOR CRAVEN: When you've seen one of us Portuguese,  
8 you've seen us all.

9 (Laughter.)

10 CHAIRMAN ROBERTI: -- Ms. Coghill's confirmation to the  
11 Floor.

12 Secretary will call the roll.

13 SECRETARY WEBB: Senator Ellis.

14 SENATOR ELLIS: Aye.

15 SECRETARY WEBB: Senator Mello.

16 SENATOR MELLO: Aye.

17 SECRETARY WEBB: Senator Petris.

18 SENATOR PETRIS: Aye.

19 SECRETARY WEBB: Senator Craven.

20 SENATOR CRAVEN: Aye.

21 SECRETARY WEBB: Senator Roberti.

22 CHAIRMAN ROBERTI: Aye.

23 The vote is five to nothing; confirmation is recommended  
24 to the Floor do pass.

25 Congratulations.

26 MS. COGHILL: Thank you.

27

28



1 (Thereupon this portion of the Senate  
2 Rules Committee hearing was terminated  
3 at approximately 3:15 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this  
11<sup>th</sup> day of June, 1987.

  
EVELYN MIZAK  
Shorthand Reporter









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26 Evelyn Mizak  
27 Shorthand Reporter  
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APPEARANCESMEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman  
SENATOR WILLIAM CRAVEN, Vice Chairman  
SENATOR JIM ELLIS  
SENATOR HENRY MELLO  
SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

NONE

STAFF PRESENT

CLIFF BERG, Executive Officer  
PAT WEBB, Committee Secretary  
RICK ROLLENS, Consultant on Bill Referrals  
NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

BENJAMIN FELTON, Member  
California Horse Racing Board  
MICHAEL MONAGAN, Member  
Occupational Safety and Health Appeals Board  
MAUREEN A. O'CONNELL, Member  
Board of Prison Terms  
DONALD E. RUDLOFF, Member  
Board of Prison Terms









I N D E X

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
BENJAMIN FELTON, Member California Horse Racing Board	1
Motion	2
Committee Action	2
Recess	2
Resumption of Proceedings	2
MICHAEL MONAGAN, Member Occupational Safety and Health Appeals Board	2
Statement by SENATOR MELLO re: Appropriateness	3
Statement by SENATOR PETRIS	3
Statement by SENATOR CRAVEN	4
Motion	5
Committee Action	6
MAUREEN A. O'CONNELL, Member Board of Prison Terms	6
Motion	7
Questions by CHAIRMAN ROBERTI re:	
Setting of Terms & Overcrowding	7
Prisons Housing Lifers	8
Number of Lifers in System	8
Questions by SENATOR PETRIS re:	
Occupations of Other Board Members	9
Public Relations	10
Committee Action	12









I N D E X (Continued)Page

DONALD RUDLOFF, Member  
Board of Prison Terms

12

Motion

13

Question by CHAIRMAN ROBERTI re:

Determinate Sentencing Law

13

Questions by SENATOR PETRIS re:

Public Education about Board Members

13

Determinate Sentencing Law

14

Committee Action

15

Termination of Proceedings

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Certificate of Reporter

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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Benjamin Felton, Member of the California Horse Racing Board.

Senator Craven, let me turn this over to you for a moment.

SENATOR CRAVEN: Yes, sir.

CHAIRMAN ROBERTI: And after Mr. Felton, we'll break for five minutes.

SENATOR CRAVEN: Mr. Felton, we'll ask you as we ask all of the Governor's Nominees to state why in your opinion you're qualified to hold this position?

MR. FELTON: Senator Craven, I'm an attorney with approximately 26 years practice now. I have been involved in the industry for about roughly almost 19 years now. I have a thorough familiarity with the inner workings of the whole industry.

I also, of course, have served for the last four and a half years on the Board, both as a Member and as a Chairman for the last approximately two years, a little bit shy, from April of '85 -- sorry, April of '85 through December of '86.

This is not my sole avocation. I'm primarily in the practice of law; however, being a breeder, having been an owner, having knowledge of the back stretch as well as the front stretch, I feel gives me quite a bit of expertise in the area.

SENATOR CRAVEN: Very well. Thank you.



1 Any questions by the Committee at this juncture? Is  
2 there anyone in the audience who wishes to comment either pro or  
3 con? There appears to be no one.

4 SENATOR ELLIS: Move the appointment.

5 SENATOR CRAVEN: Senator Ellis moves confirmation be  
6 recommended to the Floor.

7 Call the roll, please.

8 SECRETARY WEBB: Senator Ellis.

9 SENATOR ELLIS: Aye.

10 SECRETARY WEBB: Senator Mello.

11 SENATOR MELLO: Aye.

12 SECRETARY WEBB: Senator Petris.

13 SENATOR PETRIS: Aye.

14 SECRETARY WEBB: Senator Craven.

15 SENATOR CRAVEN: Aye.

16 SECRETARY WEBB: Senator Roberti.

17 SENATOR CRAVEN: It's four-zero.

18 Congratulations.

19 MR. FELTON: Thank you, Senators.

20 SENATOR CRAVEN: Next we'll take a five-minute recess.

21 (Thereupon a brief recess was taken,  
22 after which legislation was voted  
23 upon before the Committee.)

24 CHAIRMAN ROBERTI: Michael Monagan, Member of the  
25 Occupational Safety and Health Appeals Board.

26 MR. MONAGAN: Mr. Chairman, Members, I'm Michael  
27 Monagan, Member of the Board.  
28





1 CHAIRMAN ROBERTI: We'll ask you what we ask all the  
2 Governor's Appointees and that is why you feel you are qualified  
3 to assume this position.

4 MR. MONAGAN: I've served on the --

5 SENATOR MELLO: Mr. Chairman, before we get into the  
6 question, may I ask a question of the Chair, I guess it would be.

7 It appears that this Board is being suspended by the  
8 Governor. I'm just raising the question of whether we should be  
9 confirming somebody to a board that's going to be out of business  
10 on the first --

11 CHAIRMAN ROBERTI: That's to be a consideration. It has  
12 nothing to do specifically with Mr. Monagan's qualifications.

13 SENATOR MELLO: No, but I just checked with Nancy here,  
14 and it appears that his appointment, which came in January, would  
15 not be in jeopardy until January, 1988.

16 For that reason, my feeling is that we should put this  
17 over at this point until we see what's going to happen with the  
18 Cal-OSHA. If it's not going on then I think the question becomes  
19 moot, really, as to whether people should be appointed to it.

20 CHAIRMAN ROBERTI: Senator Petris.

21 SENATOR PETRIS: I think that's a good question, and I  
22 think the timing is proper.

23 I don't think we should even get into the questioning.  
24 If we question him and then decide we don't want to take it up,  
25 it reflects on him.

26 I think he's an excellent Member, and he should continue  
27 if he has any duties. But the question raised is, you know,  
28



1 there's an awful lot of people been laid off. Why do we need an  
2 Appeals Board? And I think we ought to either not take this up,  
3 or lay it on the table, or freeze it for a while until we get the  
4 proper clarification from the Governor's Office. It doesn't make  
5 sense.

6 I think if we do it up front --

7 CHAIRMAN ROBERTI: Mr. Monagan, I may have set you  
8 prematurely, which I --

9 SENATOR PETRIS: It's no reflection on him; that's what  
10 I want to make clear.

11 It's a question of the Governor's policy toward that  
12 whole Board. If that whole thing's going to be emasculated, then  
13 everybody on it should take a walk.

14 CHAIRMAN ROBERTI: Senator Craven.

15 SENATOR CRAVEN: Well, I don't know whether the Governor  
16 is intransigent as it relates to this issue or not, but I think  
17 it's entirely within the realm of possibility that the Governor  
18 may recant or reconsider, as the case may be, and perhaps by some  
19 degree of reshuffling, achieve a portion of what he set out to do  
20 and that is to save a few dollars by reducing the amount of  
21 budget appropriated for this division of government but retain in  
22 essence the Board and the structure of Cal-OSHA.

23 And that being the case, it would seem to me to be  
24 appropriate to hear Mr. Monagan today and to perhaps by so doing,  
25 confirming him, indicate to the Governor that we're very much in  
26 favor of the Cal-OSHA program, and it may be a leg up on success.



1 SENATOR MELLO: Mr. Chairman, I'd like to move that we  
2 postpone action on Mr. Monagan and setting forth that this is  
3 absolutely no reflection on his nomination, but it be postponed  
4 until after the budget is finalized and a decision has been made  
5 by the administration of whether or not they want to continue  
6 with Cal-OSHA or not.

7 Then at that point, if they do continue, we'd ask that  
8 the Secretary place his name before the Committee again  
9 expeditiously.

10 CHAIRMAN ROBERTI: The Consultant, how much time does  
11 Mr. Monagan have?

12 MS. MICHEL: We have until January 23rd of '88.

13 CHAIRMAN ROBERTI: Senator Mello's motion is before us  
14 to postpone Mr. Monagan until such time as we know what is  
15 happening to Cal-OSHA, which I suspect would be after the  
16 Governor disposes of the budget, which will occur after the  
17 budget is passed.

18 Secretary will call the roll.

19 SECRETARY WEBB: Senator Ellis.

20 SENATOR ELLIS: Aye.

21 SECRETARY WEBB: Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Senator Craven.

26 SENATOR CRAVEN: No.

27 SECRETARY WEBB: Senator Roberti.  
28





1 CHAIRMAN ROBERTI: Aye.

2 Four to one, just to delay confirmation.

3 I should have checked with the Members before we brought  
4 you up, Mr. Monagan, and I didn't. Just to double that this is  
5 no reflection on your qualifications, which we know are very  
6 good.

7 MR. MONAGAN: Thank you, sir.

8 CHAIRMAN ROBERTI: The next appointment is Maureen A.  
9 O'Connell, Member of the Board of Prison Terms.

10 MS. O'CONNELL: Good afternoon, Senators.

11 My name is Maureen O'Connell, and I'm here before you  
12 today to hopefully get a favorable recommendation.

13 CHAIRMAN ROBERTI: Why do you feel you're qualified to  
14 assume this position?

15 MS. O'CONNELL: I've been in law enforcement for about  
16 11 years. I was with the Alameda County Sheriff's Department,  
17 obtaining the rank of Sergeant there. I've also served the --  
18 I'm sorry?

19 CHAIRMAN ROBERTI: Just speak up to the microphone.

20 MS. O'CONNELL: I was a member of the Alameda County  
21 Sheriff's Department for approximately 11 years, obtaining the  
22 rank of Sergeant for six. And I've also served on the Citizens  
23 Advisory Committee to Alternatives to Incarceration, submitted a  
24 minority report to the Legislature on that subject. I have also  
25 served in the capacity of being on the PORAC Board of Directors,  
26 the California Peace Officers Board of Directors, and worked  
27 closely with the State Sheriffs Association of California.  
28



1 CHAIRMAN ROBERTI: Thank you very much, Ms. O'Connell.  
2 Are there any questions?

3 SENATOR PETRIS: Mr. Chairman.

4 CHAIRMAN ROBERTI: Yes, Senator Petris.

5 SENATOR PETRIS: There are probably a lot of questions  
6 because of the spotlight on her agency right now, but I've  
7 happened to know Ms. O'Connell for many years in Alameda County  
8 where she served with outstanding ability in the Sheriff's  
9 Department. It's hard for me to think of her as a Deputy  
10 Sheriff, though. I think she should go on What's My Line; she'd  
11 win it.

12 So, I would like to have the privilege of making the  
13 motion for her confirmation without prejudice to any questions  
14 the Members want to ask, of course.

15 CHAIRMAN ROBERTI: Senator Petris moves Ms. O'Connell's  
16 confirmation be recommended to the Floor.

17 Just a couple questions mostly of interest to me. To  
18 what extent in setting terms does the Board take into  
19 consideration prison overcrowding?

20 MS. O'CONNELL: The terms that we set primarily,  
21 Senator, are terms for life prisoners. We do also have a  
22 function in terms of parole revocation, and we also return people  
23 to custody in terms of parole revocation.

24 We are naturally concerned about overcrowding; however,  
25 we are more concerned with public safety and the crime fits the  
26 punishment. So in essence what I'm saying to you is that if the  
27 crime is of a maximum term, then the person will get the maximum  
28 term.





1 CHAIRMAN ROBERTI: So therefore that's not really a  
2 major factor?

3 MS. O'CONNELL: No, it is not.

4 CHAIRMAN ROBERTI: How many prisons in our system  
5 generally house the life termers?

6 MS. O'CONNELL: Right now they're in the process of  
7 moving several of the lifers from one institution to another. We  
8 have lifers held at the California Institute for Women. We have  
9 them at Chino; we have them at Tehachapi, San Quentin, Folsom,  
10 and eventually they are going to be moving into the new San Diego  
11 facility. They are not yet there.

12 CHAIRMAN ROBERTI: How many are on life terms in the  
13 California prison system?

14 MS. O'CONNELL: Approximately 3,000, I think. Something  
15 like that. It might be more than that.

16 CHAIRMAN ROBERTI: Those are almost exclusively murder?

17 MS. O'CONNELL: Murderers, rapists, kidnappers, kidnap  
18 for robbery, and train wreckers. We have one train wrecker. I  
19 haven't sat on his case yet, but there is one train wrecker in  
20 the whole system. It's a capital offense.

21 CHAIRMAN ROBERTI: Sounds like an old-fashioned crime;  
22 doesn't it. I guess it's a serious one.

23 SENATOR ELLIS: How long has he been there?

24 MS. O'CONNELL: I don't know. I don't even know who it  
25 is, but I do know he's at Folsom.

26 SENATOR CRAVEN: He came in on a horse, though.  
27  
28



1 CHAIRMAN ROBERTI: I suspect he's been there a long  
2 time.

3 Any other questions? Senator Petris.

4 SENATOR PETRIS: I'm trying to find the names of the  
5 others who serve on the Board.

6 Can you tell us the different occupations or professions  
7 from which they are drawn?

8 MS. O'CONNELL: Yes.

9 SENATOR PETRIS: The rest of the Board?

10 MS. O'CONNELL: Our Chairman, Mr. Koenig, was the  
11 Sheriff of Tehama County.

12 Vice Chairman, Mr. Aceto, was Deputy Sheriff of San  
13 Bernardino County.

14 Mr. Al Leddy was the District Attorney in Kern County.

15 Mr. Rudy Castro was -- was on the Board, the YOPB Board;  
16 he was also the Mayor of Yerba Buena, and he was before that in  
17 probation.

18 Mr. Tong was in -- I'm not quite sure. He worked for  
19 Governor Brown, and then he also has a sociology degree.

20 We have Mr. Dave Brown recently appointed. He was the  
21 Chief Counsel with the Board.

22 Mr. Rudloff comes from the San Diego District Attorney's  
23 Office, and myself from Alameda County.

24 SENATOR PETRIS: So all but one are clearly law  
25 enforcement backgrounds and one is related to it, probation.

26 MS. O'CONNELL: Yes, with the exception of the attorney  
27 who was the Chief Counsel.  
28



1           SENATOR PETRIS: Counsel.

2           MS. O'CONNELL: Right.

3           SENATOR PETRIS: I have a suggestion I'd like to make.  
4 I think that the Board needs to do some PR.

5           I've been listening to talk shows which, as usual, fill  
6 the air with 90 percent inaccuracies and misstatements and  
7 complete ignorance, and 10 percent fact. And I have never heard  
8 anybody on one of those talk shows, when they're beating up on  
9 your Board, point out that these are all law enforcement people.  
10 You know, they call them all kinds of names, they're people that  
11 don't know the real world out there; they haven't dealt with  
12 criminals; they just are patsys for them. And the first time  
13 they come in and apply for parole, they let them out.

14           And it does a great deal of damage, I think, to the  
15 Board and disservice to the public. They don't seem to know, and  
16 the disk jockeys who run these things either don't know or  
17 deliberately conceal it from the public in order to stir them up.

18           MS. O'CONNELL: Right.

19           SENATOR PETRIS: But night after night the subject,  
20 especially in the current, you know, infamous case, they're  
21 beating up on the Board, and not one time has anyone bothered to  
22 say -- and I've tried to call in two or three times myself, but  
23 the lines have always been busy, just to point out to them that I  
24 always felt the majority, I didn't realize it was that high in  
25 the percentage, have come out of law enforcement. You're talking  
26 about prosecutors.

27           MS. O'CONNELL: Right.  
28





1           SENATOR PETRIS: You're talking about police on the  
2 firing line. You're talking about deputy sheriffs.

3           And if they don't feel that people who have dealt with  
4 criminals during their whole professional career are the proper  
5 ones to deal with it, who's going to do it? They seem to have  
6 the impression that they're all sociologists.

7           MS. O'CONNELL: Right.

8           SENATOR PETRIS: And don't seem to care and have never  
9 been exposed to danger in dealing with criminals.

10          MS. O'CONNELL: Well, I thank you for your comments.  
11 That's been a topic of mine, and I brought it up at the last  
12 Board meeting and continue to bring it up at the Board meetings  
13 about how, in terms of that, we do need some more positive PR  
14 about exactly what we're doing.

15          The misinformation is between the infamous case, as you  
16 call it, and what the law really is in terms of who actually has  
17 responsibility in ISL versus DSL, and we need to become more  
18 actively involved in our communities and statewide in terms of a  
19 positive approach because there is a place in California for  
20 parole.

21          SENATOR PETRIS: Well, I would recommend it strongly.  
22 You might want to start with the hosts of these shows, because  
23 they really compound the problem. It's just awful, some of the  
24 things they say, and it's frustrating when you know that they're  
25 misinformed or deliberately misleading people.

26          MS. O'CONNELL: Even the media is extremely  
27 underknowledge about our field.  
28



1 Thank you for your comment.

2 SENATOR PETRIS: Thank you.

3 CHAIRMAN ROBERTI: Thank you. Any further questions?

4 Senator Petris' motion is before us. Is there any  
5 opposition in the audience?

6 The Secretary will call the roll.

7 SECRETARY WEBB: Senator Ellis.

8 SENATOR ELLIS: Aye.

9 SECRETARY WEBB: Senator Mello.

10 SENATOR MELLO: Aye.

11 SECRETARY WEBB: Senator Petris.

12 SENATOR PETRIS: Aye.

13 SECRETARY WEBB: Senator Craven.

14 SENATOR CRAVEN: Aye.

15 SECRETARY WEBB: Senator Roberti.

16 CHAIRMAN ROBERTI: Aye.

17 The vote is five to nothing; confirmation is recommended  
18 to the Floor.

19 Congratulations.

20 MS. O'CONNELL: Thank you very much.

21 CHAIRMAN ROBERTI: Thank you.

22 The next nominee is Donald Rudloff, Member of the Board  
23 of Prison Terms.

24 Mr. Rudloff, we'll ask you the same questions: Why you  
25 feel you're qualified to assume this position?

26 MR. RUDLOFF: Well, I can only point to my experience as  
27 a Deputy District Attorney, Senator. I suppose in that business  
28





1 one has to learn rather rapidly, or he doesn't succeed, to  
2 evaluate the respective merits of individuals and situations.  
3 Basically that's what one does as a Member of the Board of Prison  
4 Terms.

5 CHAIRMAN ROBERTI: Are there any questions from the  
6 Members of the Committee?

7 SENATOR CRAVEN: I would move Mr. Rudloff.

8 CHAIRMAN ROBERTI: Senator Craven moves Mr. Rudloff's  
9 confirmation.

10 There's been some concern about the determinate  
11 sentencing law. Do you recommend any changes? If so, which?

12 MR. RUDLOFF: It's a very complicated question, Senator.  
13 The determinate sentencing law, I suppose, depends upon your  
14 perspective. By you I mean your personal perspective.

15 Certainly there could be changes that would enhance the  
16 total system but they would obviously be subjected to the  
17 political process. They may get watered down in that context.

18 CHAIRMAN ROBERTI: Any further questions? Senator  
19 Petris.

20 SENATOR PETRIS: Yes, you heard my comments to Ms.  
21 O'Connell.

22 Do you have any disagreement with the need for better  
23 education of the media and the public on who's on the Board,  
24 where they come from, what they do?

25 MR. RUDLOFF: No, I think that's very appropriate. I  
26 believe that essentially the Board has embarked upon a program  
27 now that hopefully will do that.  
28



1           SENATOR PETRIS: I would urge you also to try to  
2 accelerate that.

3           The question was on the determinate sentence. Just a  
4 week or so ago I heard discussion of determinate sentence by one  
5 of the talk show hosts who was complaining because the Supreme  
6 Court is the one that came up with this idea of a determinate  
7 sentence and foisted it on us.

8           MR. RUDLOFF: Well that's, I suppose, typical of many.

9           SENATOR PETRIS: They don't know that the bill was  
10 carried by a former prosecutor, Senator Neiedly of Contra Costa  
11 County, and had strong support from law enforcement all over the  
12 place. There were some differences, yes, but it was part of a  
13 conservative movement, you might say, in trying to improve  
14 things.

15           Now, he doesn't even know it's a statute. He's calling  
16 it a court decision.

17           He was finally challenged on it, and he said, "Well, the  
18 Court had to approve sooner or later, so they probably made a  
19 decision on it."

20           MR. RUDLOFF: That's typical.

21           SENATOR PETRIS: Well, okay. I think I've said enough  
22 on it.

23           MR. RUDLOFF: Thank you.

24           SENATOR CRAVEN: I think Mr. Rudloff's District Attorney  
25 was in opposition to the determinate sentencing bill.

26           Wasn't Miller in opposition to that, Don?

27           MR. RUDLOFF: Yes, sir.  
28



1 SENATOR CRAVEN: Call for the question, Mr. Chairman.

2 CHAIRMAN ROBERTI: Senator Craven calls the question.  
3 Any opposition in the audience?

4 Seeing none, Secretary will call the roll.

5 SECRETARY WEBB: Senator Ellis.

6 SENATOR ELLIS: Aye.

7 SECRETARY WEBB: Senator Mello.

8 SENATOR MELLO: Aye.

9 SECRETARY WEBB: Senator Petris.

10 SENATOR PETRIS: Aye.

11 SECRETARY WEBB: Senator Craven.

12 SENATOR CRAVEN: Aye.

13 SECRETARY WEBB: Senator Roberti.

14 CHAIRMAN ROBERTI: Aye.

15 The vote is five to nothing; confirmation is recommended  
16 to the Floor.

17 Congratulations.

18 MR. RUDLOFF: Thank you very much, sir.

19 (Thereupon this portion of the Senate  
20 Rules Committee hearing was terminated  
21 at approximately 3:30 P.M.)

22 --oo0oo--  
23  
24  
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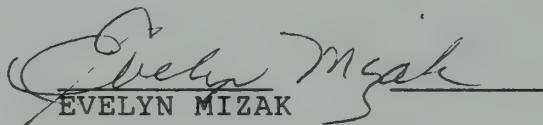
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

18<sup>th</sup> day of June, 1987.

  
EVELYN MIZAK  
Shorthand Reporter









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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR JIM ELLIS

SENATOR HENRY MEILLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

SENATOR WILLIAM CRAVEN, Vice Chairman

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

ARTHUR MARGOSIAN, Ed.D., Member  
Board of Governors of the California  
Community Colleges

MANUEL S. PENA, Member  
Board of Governors of the California  
Community Colleges

HIDEKO BANNAI, Ph.D., Member  
Board of Governors of the California  
Community Colleges

WILLIAM B. KOLENDER, Member,  
Board of Governors of the California  
Community Colleges





# I N D E X

	<u>Page</u>
Proceedings	1
<u>Governor's Appointees:</u>	
ARTHUR MARGOSIAN, Ed.D., Member Board of Governors of the California Community Colleges	1
Questions by SENATOR PETRIS re:	
Communication with Governor	2
Request for More Money	2
Adequacy of Funding	3
Declining Enrollment	4
Motion	5
Committee Action	6
MANUEL S. PENA, Member Board of Governors of the California Community Colleges	6
Questions by CHAIRMAN ROBERTI re:	
Cutbacks	7
Recommendation	7
Motion	8
Committee Action	9
HIDEKO BANNAI, Ph.D., Member Board of Governors of the California Community Colleges	9
Question by SENATOR MELLO re:	
Relationship to Paul Bannai	10
Motion	10
Committee Action	11
WILLIAM KOLENDER, Member Board of Governors of the California Community Colleges	11



I N D E X (Continued)Page

1		
2	Question by CHAIRMAN ROBERTI re:	
3	Law Enforcement Programs	11
4	Motion	12
5	Committee Action	13
6	Termination of Proceedings	13
7	Certificate of Reporter	14
8		
9		
10		
11		
12		
13		
14		
15		
16		
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P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: We have before us Governor's Appointees for confirmation. First is Dr. Arthur Margosian, Member of the Board of Governors of the California Community Colleges.

Dr. Margosian, I'll ask you what we ask all the appointees of the Governor: Why you feel you're qualified to assume this position?

DR. MARGOSIAN: I've been on the Board, Senator, for almost three years now.

I feel even more qualified then I was when I first came before this committee in terms of not only having had experience as a teacher, student, administrator in the community college system, and in the CSU system I might add, but also now having had three years on the Board, I feel I can give more to the people of this state, not just to the Board, because of my experience.

CHAIRMAN ROBERTI: Any further discussion or debate? Any questions of Dr. Margosian? Senator Petris.

SENATOR PETRIS: I've been concerned about how the community college system has been faring. The Governor seems to put it on the lower end of his priority scale for secondary institutions.

The one that operates in my district is really in big trouble financially.



1           What my question is, does your Board have any  
2 communication with the Governor? Do his people request  
3 recommendations from you as the Board on funding, or on  
4 curriculum, or on any matters affecting the community colleges?

5           Or do you operate in a vacuum out there all by yourself?

6           DR. MARGOSIAN: I would say in the past year, Senator,  
7 we've had our best relationship with the Governor. He came to  
8 us, as a matter of fact, and spoke to our Board at our last  
9 meeting here in Sacramento in May.

10          SENATOR PETRIS: Have you asked him for more money?

11          DR. MARGOSIAN: Yes, we did.

12          SENATOR PETRIS: Did you get it?

13          DR. MARGOSIAN: We've asked him for more money the last  
14 three years.

15          SENATOR PETRIS: You haven't got it yet?

16          DR. MARGOSIAN: This year we did.

17          SENATOR PETRIS: How much?

18          DR. MARGOSIAN: First time. We added about \$99 million  
19 to the budget.

20          SENATOR PETRIS: That went through our subcommittee, but  
21 I don't remember the numbers.

22          DR. MARGOSIAN: That was part of the May revise,  
23 Senator, and of course then came through the Senate and Assembly.

24          As a Member of the Board, I still have feelings. I  
25 visited a colleges yesterday in Merced, and typical of higher  
26 education since Prop. 13, some of the colleges are still in a  
27 position where they're short of funds.  
28



1           We feel that this has been the first year, at least in  
2 my opinion -- I shouldn't say "we" because we have so many new  
3 Members on the Board -- I feel very strongly this is the first  
4 year where we've had a real good treatment from the Governor's  
5 Office.

6           SENATOR PETRIS: I'm looking at the final cuts made by  
7 the Governor, bearing in mind that he felt he had a certain goal  
8 and he had to cut somewhere, I'm not saying he's picking on the  
9 community colleges, but in relation to the other two branches at  
10 the higher level, they seem to always come out on the shorter  
11 end.

12           Do you think they're adequately funded for the coming  
13 year after these cuts?

14           DR. MARGOSIAN: Well, our cuts have been minor for the  
15 coming year. We have the one, what, \$11.7 million cut -- I can't  
16 remember the specific figure, Senator.

17           I think we are -- when you say "adequately", I would  
18 question that word "adequately", because in certain areas such as  
19 equipment, deferred maintenance, I think we're still going to be  
20 on the short side, Senator.

21           And we are in a different phase in the community  
22 colleges. When I first came on the Board, we were in a decline  
23 in enrollment, and maybe this is true in Palo Alto, too, but now  
24 we've had an increase in the past year which means more needs for  
25 funds for the students that we have.

26           SENATOR PETRIS: Well, that's one of the problems. We  
27 have more money problems in a declining enrollment because  
28





1 there's some bookkeepers out there and in the Legislature who  
2 seem to want to draw exact parallels. If enrollment drops by X  
3 percent, everything else has to be cut by that percentage. They  
4 don't realize that, you know, you could have class sizes of 30  
5 and it drops to 20, but you still have to have the room, and you  
6 have to heat it, you have to have electricity, and you have to  
7 have a teacher there. That course is still vital and needs to be  
8 taught. And the ratio relationship doesn't hold up.

9 DR. MARGOSIAN: I think it's beyond that, too, Senator.  
10 To add to what you're saying, you make a commitment to a faculty  
11 member, and because the enrollment drops, you don't cut a faculty  
12 member midyear.

13 SENATOR PETRIS: But there are a lot of people out  
14 there, some of whom I guess are putting pressure on the Governor  
15 to say: Hey, you got less students; get rid of the faculty.

16 You just can't do that; can you?

17 DR. MARGOSIAN: No.

18 SENATOR PETRIS: Well, this is a type of thing I'm  
19 wondering whether the Board has had much opportunity to tell the  
20 Governor at whatever times --

21 DR. MARGOSIAN: The Board collectively has done it, as  
22 an individual I have done it in correspondence with the Governor  
23 and have received quite long letters back from him. And the  
24 budget has been, in my opinion, the last few years, the most  
25 critical item we've faced.

26 And that is as you said, I don't like to compare, by the  
27 way, I guess because of my 30 years with CSU before I retired and  
28



1 UC, but I also feel that we have not received the amount of  
2 monies that we really should.

3 SENATOR PETRIS: Well, I didn't mean to say they were  
4 the same types of institutions, but they all serve a vital role.

5 DR. MARGOSIAN: I have a prejudice in that, Senator. I  
6 think community colleges, and in my term after three years on the  
7 Board I'm convinced of it now, probably serve the most vital role  
8 in California.

9 SENATOR PETRIS: Well, I happen to agree. The success  
10 of the other two, I think, is directly related to it.

11 DR. MARGOSIAN: Community colleges.

12 SENATOR PETRIS: Yes.

13 Thank you very much.

14 CHAIRMAN ROBERTI: Any further questions of Dr.  
15 Margosian?

16 SENATOR ELLIS: Move.

17 CHAIRMAN ROBERTI: Senator Ellis moves confirmation be  
18 recommended to the Floor.

19 Any opposition in the audience? Hearing none, Secretary  
20 will call the roll.

21 SECRETARY WEBB: Senator Ellis.

22 SENATOR ELLIS: Aye.

23 SECRETARY WEBB: Senator Mello. Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Senator Craven. Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.  
27  
28





1           The vote is three to nothing; confirmation is  
2 recommended to the Floor.

3           Congratulations.

4           DR. MARGOSIAN: Thank you, Senator.

5           CHAIRMAN ROBERTI: The next appointment is Mr. Manuel  
6 Pena, Member of the Board of Governors of the California  
7 Community College System.

8           MR. PENA: Yes, sir.

9           CHAIRMAN ROBERTI: Mr. Pena, we'll ask you the same  
10 question we ask all the Governor's Appointees, and that is why  
11 you feel you're qualified to assume this position?

12          MR. PENA: Well, sir, several reasons.

13          Firstly, I have in excess of 33 years teaching in the  
14 community colleges: 15 years part-time and almost 18 years  
15 full-time.

16          I've been a chairman, department chairman, for 13 years;  
17 served the Academic Senate five terms. I've chaired the Academic  
18 Standards Committee, the Curriculum Committee, and been the  
19 college ombudsman for five years.

20          I think I know what's going on in the community college,  
21 know the problems, know what the student needs are.

22          My area is vocational education, and that is a prime  
23 issue, I think, in this state as well as many others. And in my  
24 short tenure, several meetings that I've attended, it appears  
25 that my practical experience is useful to the Board. And I feel  
26 that I am qualified.

27          CHAIRMAN ROBERTI: Are there any questions of Mr. Pena?  
28



1           Let me ask you a question. There have been some  
2 relatively stringent cutbacks in the community college system.

3           How has the Board of Governors dealt with these?

4           MR. PENA: Well, they've expressed their concern to the  
5 Governor, for one. There's a great deal of effort going into  
6 trying to prepare for the possibility of Assembly Bill 1725 to  
7 come out of the Legislature, amended as it probably will be, but  
8 there's some very promising areas in that bill that may help cope  
9 with some of the funding problems and cutbacks that we've had.

10           There's a great interest in vocational education which  
11 there seems to be more emphasis from the Governor's Office in  
12 terms of future funding for it.

13           I'm not thoroughly familiar with all the workings. I've  
14 been there a short time, but I see some promise there.

15           CHAIRMAN ROBERTI: Have you made recommendations on  
16 which direction the community college system should be going in  
17 regard to the Master Plan, or are you satisfied with the current  
18 framework under which the college system is operating?

19           MR. PENA: yes, I do believe that the State, from a  
20 state level, needs to have a stronger position, that is the  
21 Board, in terms of accountability by college districts. I don't  
22 mean that the State should try and run the tremendously large  
23 system from the state level; that would be impossible. There are  
24 too many diversified problems, needs and what have you. But it  
25 should more accountability to it and to the people of the state.

26           There's a great need for closer coordination between the  
27 California State Department of Education and the community  
28 colleges.



1 And I do believe that if the State Legislature were to  
2 delineate or, shall we say, delegate a little more authority to  
3 the Board of Governors, that some of these situations could be  
4 helped.

5 Also, I'm very encouraged by a mention that's been made,  
6 I don't understand it that thoroughly, but they've talked about a  
7 possibility of switching from ADA funding to a differential  
8 funding, which quite frankly, I think, would alleviate many, many  
9 problems. It would be much more fair to many smaller districts  
10 and many specialized programs that are underfunded at the present  
11 time because of the ADA system.

12 CHAIRMAN ROBERTI: Any further discussion or debate?

13 Is there any opposition in the audience?

14 Do I hear a motion?

15 SENATOR ELLIS: Move.

16 CHAIRMAN ROBERTI: Senator Ellis moves Mr. Pena's  
17 appointment to the Floor, recommendation to confirm.

18 Secretary will call the roll.

19 SECRETARY WEBB: Senator Ellis.

20 SENATOR ELLIS: Aye.

21 SECRETARY WEBB: Senator Mello.

22 SENATOR MELLO: Aye.

23 SECRETARY WEBB: Senator Petris.

24 SENATOR PETRIS: Aye.

25 SECRETARY WEBB: Senator Craven. Senator Roberti.

26 CHAIRMAN ROBERTI: Aye.





1           The vote is four to nothing; confirmation is recommended  
2 to the Floor.

3           Congratulations.

4           MR. PENA: Thank you very much.

5           CHAIRMAN ROBERTI: The next Appointee is Dr. Hideko  
6 Bannai, Member of the Board of Governors of the California  
7 Community College System.

8           Dr. Bannai, will you tell us why you feel you're  
9 qualified to assume this position?

10          DR. BANNAI: Well, I've always been interested in  
11 education.

12          I believe that I represent part of the diversity that is  
13 addressed in A.B. 1725. I'm a product of the community colleges.  
14 I started at Harbor Community College and went on to earn my A.A.  
15 degree at the Los Angeles Community College, and went on from  
16 there to earn my Ph.D.

17          If it were not for the community colleges, I certainly  
18 would not have had that type of opportunity.

19          I think that I do bring a certain amount of professional  
20 background to the Board of Governors. I'm a graduate of the  
21 School of Education at USC, and so I have some background in  
22 curriculum development and evaluation, and my own specialization  
23 is in teaching English to speakers of other languages. So, I  
24 have worked in the area of teacher training in E.S.L. and also in  
25 bilingual education.

26          So, I think that I can bring some background to the  
27 Board of Governors in these particular areas, and this is a  
28 particularly pressing area for the community colleges I think.



1 CHAIRMAN ROBERTI: Thank you very much, Doctor.

2 Any questions? I see no questions. I think we're  
3 letting you off easy.

4 Senator Mello.

5 SENATOR MELLO: Senator Ellis just asked me if you were  
6 by any chance related to Paul Bannai, who served in our Assembly  
7 with us a few years ago?

8 DR. BANNAI: Well thank you very much for remembering  
9 him.

10 Yes, he sends his regards, and yes, he's my husband.

11 SENATOR MELLO: Oh, your husband; that's great.

12 CHAIRMAN ROBERTI: Now I have a lot of questions.

13 (Laughter.)

14 DR. BANNAI: If you want to know what he's doing right  
15 now, he's enjoying his game of golf; he's got lots of time for it  
16 now that he's retired.

17 SENATOR PETRIS: Is he still traveling a lot?

18 DR. BANNAI: Yes, he is.

19 SENATOR ELLIS: Move.

20 CHAIRMAN ROBERTI: Senator Ellis moves Dr. Bannai's  
21 confirmation be recommended to the Floor.

22 Secretary will call the roll.

23 SECRETARY WEBB: Senator Ellis.

24 SENATOR ELLIS: Aye.

25 SECRETARY WEBB: Senator Mello.

26 SENATOR MELLO: Aye.

27 SECRETARY WEBB: Senator Petris.  
28





1           SENATOR PETRIS:   Aye.

2           SECRETARY WEBB:   Senator Craven.   Senator Roberti.

3           CHAIRMAN ROBERTI:   Aye.

4           The vote is four to nothing; confirmation is  
5 recommended.

6           Tell Paul hello and give him our best.

7           DR. BANNAI:   I will, thank you.

8           CHAIRMAN ROBERTI:   Mr. William B. Kolender, Member of  
9 the Board of Governors, California Community College System.

10           We'll ask you the same question, Mr. Kolender; that is,  
11 why you feel you're qualified to assume this position?

12           MR. KOLENDER:   Well, sir, I've been on the Board now for  
13 three years, and I'm currently the vice president of the Board of  
14 Governors.

15           I think I've contributed. I've been a teacher at the  
16 community college as well as a student, and very active  
17 particularly in San Diego County in helping to establish programs  
18 in our county with law enforcement and other voc. ed. programs.

19           CHAIRMAN ROBERTI:   What are the law enforcement  
20 programs?

21           MR. KOLENDER:   I'm the Chief of Police in San Diego, and  
22 as such we would have been -- we have established one of the  
23 first regional academies in the State of California. Right now  
24 we're in the process, we just got approval from our local board  
25 of trustees, to go in partnership and to build a regional police  
26 academy out by Miramar. It'll be done in three years.



1 CHAIRMAN ROBERTI: Sounds very good. And now I remember  
2 I've met you a number of times in San Diego.

3 MR. KOLENDER: Yes, sir.

4 CHAIRMAN ROBERTI: Senator Ellis wants the microphone.

5 SENATOR ELLIS: We get so few Appointees from San Diego  
6 that we have to make a celebration of it whenever it does occur.

7 But Bill's been a long-time close friend and Chief of  
8 Police, as he stated; outstanding Chief of Police in the city.

9 My concern when he first was appointed two years ago --

10 MR. KOLENDER: Three.

11 SENATOR ELLIS: Three, was would he have time. And I  
12 asked him today again, and he said he had had to give up a lot of  
13 his other activities in order to have the time, but he feels very  
14 comfortable with it, and I think he's done an outstanding job.

15 I would like to move the confirmation.

16 CHAIRMAN ROBERTI: Very good, Senator Ellis has the  
17 honor of moving the confirmation.

18 Is there any opposition in the audience?

19 Hearing none, the Secretary will call the roll.

20 SECRETARY WEBB: Senator Ellis.

21 SENATOR ELLIS: Aye.

22 SECRETARY WEBB: Senator Mello.

23 SENATOR MELLO: Aye.

24 SECRETARY WEBB: Senator Petris.

25 SENATOR PETRIS: Aye.

26 SECRETARY WEBB: Senator Craven. Senator Roberti.

27 CHAIRMAN ROBERTI: Aye.  
28



1           The vote if four to nothing; confirmation is recommended  
2 to the Floor.

3           MR. KOLENDER: Thank you all very much. Thank you,  
4 Senator.

5           CHAIRMAN ROBERTI: We're going to put over temporarily  
6 Mr. Bruinsma's nomination.

7                   (Thereupon this portion of the Senate  
8 Rules Committee hearing was terminated  
9 at approximately 2:45 P.M.)

10                   --oo0oo--





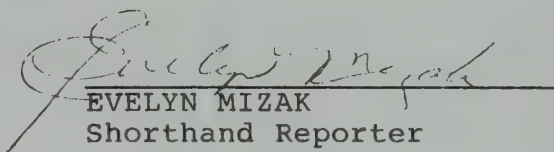
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this  
9<sup>th</sup> day of July, 1987.

  
EVELYN MIZAK  
Shorthand Reporter









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HEARING

SENATE RULES COMMITTEE

STATE OF CALIFORNIA

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26 Reported by:

27 Evelyn Mizak  
28 Shorthand Reporter



APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

MEMBERS ABSENT

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

JOHN A. MURDY III, Member  
Fish and Game Commission

JANE O'NEILL, Member  
Workers' Compensation Appeals Board

HAZEL ROGERS, Member  
Workers' Compensation Appeals Board

JOHN SULLIVAN, Member  
Workers' Compensation Appeals Board

DENNIS CARPENTER

MARK J. PALMER  
Sierra Club

RICHARD SPOTTS  
Defenders of Wildlife

VIRGINIA HANDLEY  
Fund for Animals

BILL YEATES  
Mountain Lion Coalition





APPEARANCES (Continued)

1  
2 ZEKE GRADER

Pacific Coast Federation of Fishermen's Associations

3 CAROL FULTON

4 Friends of the Sea Otter

5 JACK FENTON, former Chairman

Workers' Compensation Appeals Board

6

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I N D E X

Page

Proceedings

1

Governor's Appointees:

JOHN A. MURDY, III, Member  
Fish and Game Commission

1

Witness in Support:

DENNIS CARPENTER

2

Witnesses with Concerns:

MARK J. PALMER  
Sierra Club

4

Questions by SENATOR CRAVEN re:

Condors

7

RICHARD SPOTTS  
Defenders of Wildlife

9

Questions by SENATOR CRAVEN re:

Aesthetics of Hunters

10

Statement by CHAIRMAN ROBERTI

11

VIRGINIA HANDLEY  
Fund for Animals

12

Questions by CHAIRMAN ROBERTI re:

Triploid Gass Carp

13

Response by MR. MURDY

14

Statement by SENATOR CRAVEN re:

Triploid Grass Carp

14

Channel Islands

15

Response by MR. MURDY

16

BILL YEATES  
Mountain Lion Coalition

18

Questions by SENATOR MELLO re:

Assembly Bill 1588

22





I N D E X (Continued)

	<u>Page</u>
Questions by SENATOR CRAVEN re:	
Independence of Commission	23
ZEKE GRADER Pacific Coast Federation of Fishermen's Associations	26
CAROL FULTON Friends of the Sea Otter	28
Questions by SENATOR CRAVEN re:	
Translocation	30
Otters' Appetites	31
Committee Action	31
Statement by SENATOR DOOLITTLE	32
<u>Governor's Appointees:</u>	
JANE O'NEILL, Member Workers' Compensation Appeals Board	33
Motion	34
Statement by CHAIRMAN ROBERTI	35
Committee Action	36
HAZEL ROGERS, Member Workers' Compensation Appeals Board	36
Motion	36
Committee Action	37
Statement by JACK FENTON	37
JOHN SULLIVAN, Member Workers' Compensation Appeals Board	39
Motion	39
Committee Action	40
Termination of Proceedings	40
Certificate of Reporter	41



P R O C E E D I N G S

--oo0oo--

(In pre-hearing discussion, the Chair explained the reasons for putting over the vote on the appointment of John A. Murdy III for one week so that Senator Petris could be present.)

CHAIRMAN ROBERTI: John A. Murdy, Member of the Fish and Game Commission.

Mr. Murdy, I'm sorry we're going to have to carry you over for two weeks simply because we want to have Senator Petris here. But in the meantime, please indicate to us why you feel you're qualified to assume position.

MR. MURDY: Senator, do you mean two weeks or one week?

CHAIRMAN ROBERTI: One week. Did I say two weeks? I meant one week.

MR. MURDY: Senator, I think I said to several people that I have desired to be on the Fish and Game Commission to preserve the habitat and some of the resources that the State of California has had as a child growing up in this state for my grandchildren. And hopefully I can be able to do that as a Member of the Fish and Game Commission.

I have been a farmer. I've been outdoors all my life. I've enjoyed the outdoors. I would like to continue to preserve that outdoors.

CHAIRMAN ROBERTI: Very good.



1 Does anybody have any questions of Mr. Murdy, or maybe  
2 we should hear the supporters and opponents and then maybe  
3 reserve our questions for afterwards.

4 Are there any people in support of Mr. Murdy who wish to  
5 testify? Then what we'll do is, we'll take opposition, and after  
6 that we'll -- oh, yes, Senator Carpenter.

7 MR. CARPENTER: I can do it now or later, Senator.

8 CHAIRMAN ROBERTI: Why don't you do it now.

9 MR. CARPENTER: All right.

10 Mr. President and Members, it's kind of unusual for me  
11 to be here in this capacity because I'm here as an individual. I  
12 have no clients and do no work with the Fish and Game Commission,  
13 but I happen to have been acquainted with John Murdy III, who is  
14 seated on my right here, for well more than 20 years, and with  
15 his father substantially more than that.

16 I was somewhat concerned when I had heard rumors that  
17 there may be some opposition to his appointment, and I just  
18 wanted to add a voice of someone who has come from Orange County  
19 where he has, and to point out to you that he didn't emphasize it  
20 particularly, but he is a well-known sportsman. He has had an  
21 interest in the out-of-doors and preservation and what have you  
22 for a long time. He's a hunter, which most people I don't think  
23 feel make it inconsistent with a conservation attitude.

24 His family's had an extraordinary record of service to  
25 this State and to Orange County for many years, and you may know  
26 of his father. But that, of course, doesn't qualify anybody  
27 except I wanted to say he's a tough person. He's an outspoken  
28





1 person. As a matter of fact, I didn't advise him that I was  
2 going to come here and make a comment, nor did he ask me to do  
3 so, but I think that that's kind of the shyness or reticence that  
4 I think bespeaks his personality.

5 I do think that he is the kind of person that has the  
6 total independence to act in the manner that he thinks is  
7 appropriate when serving on an agency like this, a commission  
8 where decisions are made that have commercial implications, I  
9 guess principally in the fishing area. They have preservation  
10 interests to be directed, and they also have to do with the  
11 sportsmen interests in hunting and fishing and what have you.

12 He's done these things. He's traveled extensively, and  
13 frankly I can't think of a person better qualified to represent  
14 the people in this capacity.

15 I know everybody or every group that has an interest in  
16 a given commission would rather have somebody they control or was  
17 totally synonymous with their statements and beliefs to represent  
18 them and the public on that commission, but I think that the kind  
19 of thing, the balance that I feel he represents, is a very  
20 excellent one.

21 I just wanted to add my two cents' worth, and I  
22 appreciate you hearing me for that purpose.

23 CHAIRMAN ROBERTI: Thank you very much, Senator.

24 Any other testimony in support? Are there opponents? I  
25 don't see any opponents.

26 Are there people with concerns? That's our third  
27 category.  
28



1 MR. PALMER: Thank you, Senator.

2 I'm Mark J. Palmer. I'm representing the Sierra Club.

3 Senator Roberti and Members of the Committee, I am not  
4 here to oppose Mr. Murdy. I think it's a little unfortunate that  
5 this issue has come up and he kind of gets stuck with it since  
6 we're talking about very broad-based decisions that affect the  
7 wildlife of the State of California that have been made by the  
8 Commission in total.

9 But the Sierra Club is very concerned about the  
10 direction the Commission has been taking under Governor  
11 Deukmejian, and we feel that we need to say something about some  
12 of those concerns and some of those directions. Perhaps  
13 Mr. Murdy can be of help to us in changing some of those  
14 directions that are going on.

15 So we come here not to oppose Mr. Murdy or any other  
16 specific appointee.

17 As I mentioned, the Commission so far under the  
18 Deukmejian Administration has pushed for removal of all  
19 California condors from the wild into zoos; has sought to block  
20 federal regulations banning lead shot from waterfowl areas to  
21 protect waterfowl from lead poisoning; has adopted what many  
22 critics consider a weaker policy on wetlands development. I  
23 understand they are working on resolving that issue, but we are  
24 concerned about the status of that. And there are a number of  
25 other issues of funding and wildlife that have not been addressed  
26 by the Commission.  
27  
28





1 In the coming months, the Commission will decide the  
2 question of sport hunting of mountain lions, the translocation of  
3 the threatened sea otter population to a new habitat on San  
4 Nicolas Island, and will face major proposals to revamp the  
5 direction and funding of the Fish and Game Department. So,  
6 there's a lot on the Commission's agenda.

7 The Department has -- the Commission, rather, has a  
8 public trust towards the wildlife of this State on behalf of the  
9 public. Wildlife belongs to all the public, not just those who  
10 hunt.

11 In the State of California, the latest figures I have  
12 are for 1980, only 2.7 percent of the population of the State of  
13 California bought hunting licenses; 2.7 percent. How many  
14 Members of the Fish and Game Commission represent sport hunters?  
15 I think there's a substantial majority.

16 As Beulah Edminston once stated, someone asked her what  
17 about the mountain lion, have you ever seen a mountain lion?  
18 Beulah Edminston's comment was: No, I've never seen a mountain  
19 lion in the wild, but it does my heart good to know that they're  
20 there.

21 I think the vast majority of the people of the State of  
22 California in their hearts feel that it is very important that  
23 mountain lions are out there, and yet the Commission has before  
24 it a proposal to issue 210 tags to 210 sport hunters to shoot  
25 those mountain lions that belong to all of us.

26 I understand from Carol Fulton, the Friends of the Sea  
27 Otter, in her discussions with Mr. Murdy that Mr. Murdy feels  
28



1 that the sea otter should not be listed as a threatened species.  
2 As a personal attitude by Mr. Murdy, that's perhaps  
3 understandable; however, I hope he understands that sea otters  
4 are protected by both State and federal law. There is a public  
5 mandate to protect the sea otters amongst the Fish and Game  
6 Commissioners, no matter what personal views the individual  
7 Commissioners might have.

8 We're talking overall about balance on the Fish and Game  
9 Commission, the need to have a variety of viewpoints. The  
10 Commission that deals with a variety of wildlife issues should be  
11 represented by a variety of concerns.

12 That isn't the case right now in our opinion with the  
13 Deukmejian Commission. We're very concerned about that.

14 In any event, I would hope that the Senate would  
15 consider our concerns. In particular there is proposed  
16 legislation by Assemblyman Robert Campbell to set up standards  
17 for Fish and Game Commissioners to provide some of this balance.  
18 We need, I think, more expertise on wildlife issues on the Fish  
19 and Game Commission.

20 I am concerned that if we don't find this kind of  
21 balance upon the Fish and Game Commission, we're going to have to  
22 come back to you, the State Senate and the State Assembly, to  
23 alter the powers of the Fish and Game Commission to deal with  
24 wildlife issues if, indeed, we can't get a Commission that  
25 represents the people of the State of California.

26 Thank you very much for your consideration of our views,  
27 Senator. We appreciate it.  
28



1 CHAIRMAN ROBERTI: Thank you very much.

2 SENATOR CRAVEN: May I ask a questions?

3 CHAIRMAN ROBERTI: Yes, Senator Craven.

4 SENATOR CRAVEN: Mr. Palmer, you mentioned the condor  
5 early on in your remarks, and I know very little about the  
6 condor.

7 But it's my impression that there are not too many of  
8 them around, and that some agency has taken upon themselves to  
9 try to capture some birds and place them in what we'll call  
10 protective custody in order that they may breed and develop more  
11 of those birds.

12 Now, I take it that you have an objection to that?

13 MR. PALMER: Our objection, Senator, is not to the  
14 capture of some birds and captive breeding. We are not opposed  
15 to captive breeding per se.

16 The problem is that the zoos, specifically the Los  
17 Angeles and the San Diego Zoo, along with the California Fish and  
18 Game Commission, if you will, substantially developed a program  
19 to take all of the birds left in the wild into captivity.  
20 There's now one bird left in the wild; there are 25 currently in  
21 the San Diego and Los Angeles Zoos.

22 Our concern is that by removing those birds, you remove  
23 the chance of returning them to the wild, of protecting the  
24 habitat under the federal Endangered Species Act, that there's  
25 just a variety of problems with taking them all in as opposed to  
26 a population that you could begin breeding and trying to restore  
27 the population, as was done with whooping cranes. We have some  
28





1 in the wild; we have some in captivity. That isn't the case with  
2 the condor. All of them are going in.

3 SENATOR CRAVEN: I'm not a hunter. I've never been a  
4 hunter, and if my luck holds, I never will be a hunter.

5 I would think that if you have those birds, or any  
6 animals out there, there's always a danger that somebody's going  
7 to crank off a round and kill them in the case of a bird.  
8 Unfortunately, there are a lot of people who do not operate under  
9 the strict confines of the law, as you well know, and this is not  
10 to in any way denigrate hunters, but there are some people who  
11 have to be called hunters because they have a firearm and  
12 discharge it at animals that pay little or no attention.

13 My thought is that when you don't take the steps  
14 necessary to protect those birds, you probably are increasing the  
15 chance that they may well be decimated. That's why I don't look  
16 upon it, I suppose, the same as you.

17 And also the fact that I'm a San Diegan, and I'm very  
18 proud of the San Diego Zoo, and I think they've done a very, very  
19 find job with birds and animals of all types.

20 MR. PALMER: I think the San Diego Zoo has done an  
21 excellent job including on the condor program, I might add.

22 The problem is, I guess, Senator, that instead of  
23 resolving the problems of people who shoot condors, that we're  
24 kind of sweeping it under the rug by taking the condors into the  
25 zoo. I think we need a balance there to work towards resolving  
26 those environmental issues rather trying to make them go away by  
27 using the zoos.  
28



1           SENATOR CRAVEN: Yes.

2           So basically what you're saying is, you have no  
3 objection to the Nominee as such. You would just hope that he  
4 would take into consideration the things that you and your  
5 organization stand for?

6           MR. PALMER: That's correct.

7           SENATOR CRAVEN: Is there any reason for you at this  
8 time to believe that he does not?

9           MR. PALMER: I think the discussions he had with Carol  
10 Fulton on the sea otter and the translocation question makes me  
11 very leery.

12          SENATOR CRAVEN: Yes, but the Sierra Club does not of  
13 necessity hold themselves to be the sine qua non of everything's  
14 that good and proper; do they?

15          MR. PALMER: No.

16          SENATOR CRAVEN: That's good.

17          Fine, thank you very much.

18          MR. PALMER: I appreciate it.

19          CHAIRMAN ROBERTI: Yes, are you hear expressing your  
20 concern or are you in opposition?

21          MR. SPOTTS: Concern.

22          CHAIRMAN ROBERTI: All right.

23          MR. SPOTTS: Mr. Chairman and Members, Richard Spotts  
24 with the Defenders of Wildlife.

25          We oppose the Governor's narrow orientation in  
26 appointing four of the five sitting Fish and Game Commissioners  
27 who only generally represent hunting and agricultural interests.  
28





1           The Fish and Game Commission deals with a broad spectrum  
2 of issues and wildlife constituencies, including endangered  
3 species, law enforcement, habitat protection, forest planning,  
4 and fisheries.

5           A balanced Fish and Game Commission would consist of  
6 Commissioners with relevant experience, background or academic  
7 credentials in at least many of these areas. We believe that  
8 none of the current Commissioners adequately represents the vast  
9 majority of Californians who appreciate wildlife for intrinsic  
10 reasons and nonconsumptive uses.

11           We urge this Committee to strongly recommend that the  
12 Governor appoint Commissioners who recognize the intrinsic,  
13 aesthetic and ethical benefits of wildlife instead of simply  
14 their value for consumptive users.

15           Thank you.

16           SENATOR CRAVEN: May I ask a question?

17           CHAIRMAN ROBERTI: Senator Craven.

18           SENATOR CRAVEN: Mr. Spotts, you don't feel that a  
19 person who may be a hunter would be completely oblivious to the  
20 aesthetics of having the animals; do you?

21           MR. SPOTTS: Not necessarily, but I think that different  
22 people from different backgrounds still bring some experience or  
23 some ethics or values to their -- to how they approach issues.

24           SENATOR CRAVEN: Yes.

25           MR. SPOTTS: And I guess what we're saying is that if  
26 you have a Commission of five hunters, isn't it fair at least for  
27 the public to question whether five hunters can adequately  
28



1 represent the views over 90 percent of Californians who don't  
2 hunt, or fish, or trap?

3 I think that's the question we're raising.

4 SENATOR CRAVEN: Yes, I understand what you say, and I  
5 don't say that it's a point that's not well taken.

6 There are so many things that enter into it, and the  
7 people are viewing the singular issue of the animals and the  
8 birds from two different sides. And all you're seeking is to  
9 strike a balance.

10 I think perhaps the quarrel, if that be the word, that  
11 you may have is one which should be shared or borne by the  
12 Administration, perhaps, more than the, should I say, unfortunate  
13 Nominees of that Administration.

14 MR. SPOTTS: I would agree with you, Senator, that it's  
15 unfortunate that the only forum we have to present the concerns  
16 about the overall composition of the Commission is in this  
17 context.

18 SENATOR CRAVEN: Yes, I understand.

19 I think that you, Mr. Spotts and Mr. Palmer, have done  
20 it very benignly. And I appreciate, for one, your remarks.

21 Thank you.

22 MR. SPOTTS: Thank you.

23 CHAIRMAN ROBERTI: Let me also point out that I agree  
24 with what you're saying.

25 The difficulty is for us to reduce what you're saying to  
26 a yes or no vote on an Appointee.



1           And I have found that this Committee is on its strongest  
2 ground when it, if it is going to oppose an Appointee, if it's  
3 based on some ethical consideration, or that the law itself was  
4 not followed in the appointment.

5           Short of that, to oppose an Appointee on policy only  
6 leaves us with the option of having a meeting at some later date  
7 where the Governor will appoint somebody with the same policy  
8 perspective.

9           So I'm not saying my mind is closed on the matter, but  
10 it's very difficult to oppose gubernatorial appointees for  
11 reasons other than ethics or failure to follow the prescription  
12 of the law in making the appointment.

13           I think the problem you state is a correct one, and I  
14 think one way of getting around it is that we should change the  
15 law so that the Fish and Game Commission should be reflective of  
16 various groups of people.

17           SENATOR CRAVEN: Yes.

18           CHAIRMAN ROBERTI: Thank you very much.

19           Anybody else? Ms. Handley.

20           MS. HANDLEY: I'm Virginia Handley with the Fund for  
21 Animals. And I think we're in the second category, the  
22 opposition.

23           I realize the position that the Rules Committee is in,  
24 but that we feel perhaps if this confirmation was turned down, it  
25 would send a real message to the Governor that we do want some  
26 balance on the Commission. And the way we're going, we're just  
27 not getting it, and we're going to continue on the same path.  
28





1           We did go over the minutes of the meetings since  
2 Mr. Murdy has been on it to find specific examples of the kinds  
3 of votes that we're not in agreement with. And I'd just point  
4 out that the last set we got was for October 2nd and 3rd of '86.

5           For instance, Mr. Murdy moved to refuse to include the  
6 Channel Islands as an international biosphere reserve, which is  
7 an international program to list all these protected areas and to  
8 help coordinate in international efforts to protect the areas  
9 because there was some opposition.

10          Because there was some commercial use in the Channel  
11 Islands, Mr. Murdy moved to refuse to take part and to include in  
12 the Channel Islands in this international program.

13          Also, October 23rd, it was seconded by Mr. Murdy to  
14 produce a triploid grass carp, which is a carp that -- I don't  
15 know if I can explain how it is that they make a triploid grass  
16 carp, but in essence it becomes an exotic fish. And he seconded  
17 it to create these fish, even though it was said by the  
18 Department that not all of these fish that are created are going  
19 to be sterile. That's the idea, that they would be sterile. But  
20 that the procedure that they use to zap them to make them  
21 sterile, it is not 100 percent effective, that there are unknown  
22 but sometimes high percentages of the offspring that would be  
23 fertile, and that the large number of fertile grass carp in  
24 private waters -- I'm quoting from the minutes -- that they pose  
25 a threat to our fish and wildlife resources.

26          CHAIRMAN ROBERTI: Is there some kind of  
27 transmogrification, or whatever the word is, of the fish?  
28



1 MS. HANDLEY: You have grass carp, and diploid grass  
2 carp, and now we've got triploid grass carp. And they are  
3 considered exotic, and we do not want these fish out and  
4 reproducing.

5 CHAIRMAN ROBERTI: Are they found in the wild?

6 MS. HANDLEY: I don't believe so. I think they are  
7 being created. That's why we didn't want them lose out into the  
8 wild and so that the hope is that they would be fertile (sic.)

9 CHAIRMAN ROBERTI: We don't hear of this every day. I'm  
10 going to have Mr. Murdy explain.

11 SENATOR CRAVEN: When you said that they will be  
12 created, you mean this is a hybrid fish; is that what you're  
13 saying?

14 MS. HANDLEY: Yes, I could dig out the minutes and read  
15 to you how they create these fish.

16 CHAIRMAN ROBERTI: Maybe Mr. Murdy can help us on that.

17 MR. MURDY: I think, Senator, those were the fish to be  
18 released down in the canals in the Imperial Valley to work on  
19 some of the vegetation in the canals that they find very  
20 effective.

21 SENATOR CRAVEN: That's really what I was getting to  
22 because I used to represent Imperial, and we have a lot of  
23 problems in the canals with growth and other things.

24 CHAIRMAN ROBERTI: I take it they're hybrids.

25 SENATOR CRAVEN: Yes, I think that would be the way to  
26 explain them.

27

28





1           And these fish really are predators of sorts that do  
2 away with some of the things that we try to eradicate.

3           I have not thought of that or heard about it for years  
4 since I've been in that district.

5           What was the other point that you made, the first one  
6 you were talking about? What was that?

7           MS. HANDLEY: About the Channel Islands?

8           SENATOR CRAVEN: Yes.

9           The Channel Island situation -- I don't know, maybe  
10 Mr. Murdy could explain this too -- but it occurs to me the  
11 Channel Islands are an area wherein there is, I guess, not only  
12 some degree of breeding but a great deal of commercial fishing;  
13 is there not?

14           MS. HANDLEY: Yes, the Channel Islands are already  
15 protected. To be part of this program, they have to be protected  
16 areas.

17           This international biosphere reserve is not going to  
18 effect Channel Islands at all and what amount of exploitation  
19 that goes on there.

20           This was just to make them part of an international  
21 program that these are recognized areas that are of value to the  
22 environment, and this is an effort to list all of these areas and  
23 so that there is just more international recognition of these  
24 reserves.

25           SENATOR CRAVEN: Yes.

26           MS. HANDLEY: And I don't know exactly the reasons why  
27 it was refused, but Mr. Murdy made the move to refuse it and I  
28



1 think because there was some opposition, somebody had some  
2 commercial interests there that perhaps he felt it was going to  
3 threaten that commercial interest, although it was not going to.

4 SENATOR CRAVEN: You know, I just have to listen to the  
5 words you use, and you use the word "international," which would  
6 indicate to me it's a composite of people from countries other  
7 than the United States.

8 MS. HANDLEY: They have representatives here.

9 SENATOR CRAVEN: Yes.

10 People from, you know, Chile or some other place, can be  
11 very benign as it relates to areas over which we have influence  
12 and in which we have commercial fishing.

13 And I would think that when you use the word "reserve,"  
14 you have a tendency to raise a red flag to all commercial  
15 interests because they think: The next thing you know we're  
16 going to say we may not go there. And that may be of great  
17 economic impact.

18 Perhaps, Mr. Murdy, you might explain that to us.

19 MR. MURDY: Yes, Senators, if my memory serves me right,  
20 that would take some of the control out of the State of  
21 California and give it to this international committee, which I  
22 was against.

23 MS. HANDLEY: I don't think legally that we would have  
24 done that.

25 This was only to recognize it as a -- as a place of  
26 value. They would not have any authority to do anything at all.  
27 It just just merely to become part of an international listing of  
28



1 protected areas. And I don't think it would have had -- it would  
2 not have had any legal impact on what would happen with the  
3 Channel Islands.

4 I'll go on. Also on that same hearing, October 23rd, it  
5 was seconded by Mr. Murdy to approve a falconry license that had  
6 already been denied by the State of California to a man who had  
7 already had two citations in another state, that he then appealed  
8 this denial to the State of California, and was seconded by  
9 Mr. Murdy to approve his falconry license.

10 We'd like to see, if people are cited as violating the  
11 laws, that they do -- that they are denied further permits  
12 whether falconry, or hunting licenses, or trapping licenses.  
13 We'd like to see a lot more enforcement of the laws that we have  
14 and to turn around and give a falconry license to a man who  
15 already has a record of violating those laws.

16 I can go on to other meetings just very quickly, because  
17 other people are going to be talking about the sea otters, the  
18 condors, the mountain lions. On April 7th, at the first meeting  
19 to which Mr. Murdy came to and attended and voted, he voted to  
20 continue the predator control program in Placer County on the  
21 mountain lions. This was to kill five lions, four of whom had  
22 never predated on any sheep, because two sheepmen were going to  
23 move their animals -- move their sheep into mountain lion  
24 country. So, even before the sheep got there, they went out and  
25 approved the killing of five lions. Of course, we're not in  
26 favor of that.

27  
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1           Also, Mr. Murdy favors the lead shot over the nontoxic  
2 steel shot, and I think this perhaps can be reflected by his  
3 membership in the California Waterfowl Association, which is an  
4 organization of duck hunters. We think that this can constitute  
5 a conflict of interest.

6           I am presently on an advisory committee for the Fish and  
7 Game Commission on exotic animal permits and transferring this  
8 program to local jurisdictions, and so we feel we do need  
9 Commissioners who have some expertise, not in just the hunting of  
10 animals, but in the welfare of animals, and even not just our  
11 ducks and our deer, but other exotic animals that we have here in  
12 California.

13           We have a great number of permits that people have for  
14 the keeping of these animals. We need some expertise. When this  
15 advisory committee goes to the Commission, we'd like to have some  
16 support for the welfare of exotic animals that are in captivity  
17 in California. And Fish and Game has jurisdiction over them as  
18 well as they do our wildlife.

19           And I'll just end up saying that Gladys Sergeant would  
20 be here, too, but she just wrenched a muscle.

21           SENATOR CRAVEN: Thank you very much. We appreciate  
22 your testimony.

23           Is there anyone else who wishes to speak to this issue?  
24 One other, Mr. Bill Yeates.

25           MR. YEATES: Mr. Chairman, Members of the Committee.

26           I think that as the representative for the Mountain Lion  
27 Coalition, of which a few of the member organizations have  
28



1 already spoken, and based on what's going on now with the  
2 mountain lion issue at this time, I think the point that's been  
3 raised regarding the balance on this Commission is really  
4 extremely valid at this point when you consider that the Governor  
5 vetoed Senator Presley's bill that would have required the  
6 Department to undertake a deliberate study on mountain lions in  
7 the State of California to address many of the questions and the  
8 concerns that have been raised out in the back country regarding  
9 lions' impact on livestock, lions' impact on deer. He chose not  
10 to sign Senator Presley's bill, but vetoed it saying he would  
11 return it to the Fish and Game Commission because that was the  
12 proper body to deal with that.

13 That's real fine, but I guess I reflect more of Mark  
14 Palmer's concerns and Richard Spotts that if, in fact, we have a  
15 rather pro-hunting Commission, then we have the questions that we  
16 have raised here regarding balance.

17 Mr. Murdy, in my conversations with him -- and I think  
18 it's somewhat to his credit that he has someone like Dennis  
19 Carpenter who's willing to speak for him -- and I don't want to  
20 suggest that we have a situation where being a hunter doesn't  
21 mean that you care about wildlife issues. I don't think that's  
22 the point.

23 But the point is, how do we determine how we're going to  
24 protect species, how we're going to utilize them, or the habitat  
25 needs, things like that that need to go forward before we make a  
26 determination on how we take or utilize that.





1 I would note that in Mr. Murdy's own county, the Orange  
2 County Board of Supervisors are not impressed with the  
3 Department's work on mountain lion trophy hunting season, and  
4 they have opposed it. And I think that's what it gets down to.  
5 What we're discussing is a species that the best we can figure  
6 from what we've dealt with, we want to kill it just because we've  
7 determined that there may be some surplus, not necessarily that  
8 we're going to improve the population or do anything like that.

9 So the question of policy is extremely key because  
10 essentially that is what's been placed before this Commission.

11 So, when you consider the volume of mail that I have  
12 received, being in the middle of this issue, an overwhelming  
13 response from the public is that, well, you know, what are you  
14 going to do after the Commission approves this? Or, why do you  
15 even bother; you know the Commission's going to approve this?

16 I mean, that reflects badly on State government, that  
17 the public out there assumes that this Fish and Game Commission  
18 is set up merely to rubber stamp proposals that will allow the  
19 taking of wildlife.

20 And so for that matter, I think that we have legitimate  
21 concerns about a Governor who would turn that authority back and  
22 say to the Legislature: Well, this isn't really your purview; it  
23 should go to the Fish and Game Commission. And yet appoint  
24 people that don't necessarily want to look at a whole range of  
25 other issues.

26 And I'm not suggesting that Mr. Murdy is that type of a  
27 person. I'm probably more willing to think that Dennis Carpenter  
28



1 probably knows him better than I may accurately reflect, but  
2 sometimes, as we all know, in politics timing is everything. I  
3 think the issue is real ripe to address the question of the  
4 makeup.

5 And it's not that we require Commissioners that are  
6 somewhat controlled in allegiance to us, because I've debated at  
7 length with Brian Kahn who didn't agree with me on the mountain  
8 lion issue, but was active in dealing with questions like habitat  
9 protection, reaching out and talking to Richard Spotts or Mark  
10 Palmer or myself about doing other things, none of which the  
11 other Commissioners seem to do.

12 And my concern is that the Commission becomes a rather  
13 passive organ that merely rubber stamps what the Department wants  
14 to do rather than being an independent body, which it was set up  
15 to deal with, to establish some policy and not just be some other  
16 things.

17 So, those are the concerns I hear. Those are the  
18 concerns I think the Coalition raised, that, you know, let's be  
19 fair. I mean, there's a lot more to fish and wildlife issues  
20 than just taking the resource. There's a tremendous  
21 responsibility here, and a lot of important issues because, as  
22 our State grows and develops, we're going to have to make some  
23 really critical decisions.

24 And as you know, as Members of the Legislature, often it  
25 ends up here, and the dispute is: Well, let's leave it with the  
26 Fish and Game Commission. Well, if the Fish and Game Commission  
27 is nothing more than five people that happen to go out and hunt  
28



1 and fish, well then why isn't it your responsibility to deal with  
2 the issue if what we're down to is a public policy decision on  
3 how we're going to utilize our resources.

4 So, that's essentially our position and our concerns, is  
5 that, come on, let's have a little balance out there.

6 SENATOR MELLO: May I ask Mr. Yeates a question?

7 SENATOR CRAVEN: Yes, Senator Mello.

8 SENATOR MELLO: There's a bill introduced by Mr.  
9 Felando, Number 1588, I don't know if you've had a chance to  
10 review it or not. Are you aware of it?

11 MR. YEATES: I'm aware of the bill. I haven't had any  
12 time --

13 SENATOR MELLO: Would you support the bill in its  
14 current form?

15 MR. YEATES: I haven't -- I'm aware of the bill. I  
16 haven't spent any time --

17 SENATOR CRAVEN: Would you briefly state what the bill  
18 does, Senator Mello?

19 SENATOR MELLO: Well, I've just been handed a copy.  
20 Briefly, it'll make the Fish and Game, I think, one of these  
21 hunting and fishing clubs; take away from them all of the admini-  
22 strative hearings they now have and disciplinary action against  
23 licenses and permits, and it would really, and I may not be  
24 reflecting it properly, but based on your testimony, this goes, I  
25 think, the opposite direction. Instead of having a strong Fish  
26 and Game Commission, as required in the Constitution, this would  
27 weaken it and, I guess, put more control into the Department.  
28





1           So, 1588 makes good reading if you're interested.

2           SENATOR CRAVEN: Into the Department of Fish and Game?

3           SENATOR MELLO: Yes, it would take away from the Fish  
4 and Game Commission.

5           SENATOR CRAVEN: Well, you know, Mr. Yeates made one  
6 comment which I found rather interesting.

7           He said, and I'll paraphrase his remarks, that the  
8 Commissioners in effect rubber stamp that which the staff has  
9 recommended.

10          The staff, presumably, is a cadre of people who probably  
11 have grown up in that system with that Department. And they  
12 probably have, mixed with their professional expertise, a certain  
13 background which has led them in a particular direction.

14          Mr. Yeates also said that people say: Well, you can't  
15 do anything. And I'm sure it's very, very frustrating for him.

16          But those of us playing our particular roles find that  
17 people tell us that quite frequently as well: Oh, you can't  
18 fight City Hall. I've told them that you can, and I really  
19 believe that.

20          I'm confident that Mr. Yeates and Messrs. Palmer and  
21 Spotts and Ms. Handley probably appear before the meetings of the  
22 Commission.

23          Is that not correct, Bill?

24          MR. YEATES: Yes.

25          SENATOR CRAVEN: And you make a pitch on every issue  
26 that you feel deserves one?

27          MR. YEATES: Yes.

28



1           SENATOR CRAVEN: But what you're saying is that you win  
2 very few.

3           MR. YEATES: No, I don't think that I want to  
4 characterize it that way. I mean, we have our disagreements, and  
5 you win some, you lose some.

6           But I guess my concern is, we set up an independent  
7 agency here to address, you know, what is of overwhelming concern  
8 to the public. If you were to consider the vote on Proposition  
9 19, the Wildlife Habitat Protection Bond, and polls on the  
10 question of wildlife protection, the public is overwhelmingly in  
11 support of it.

12           And yet I think that the membership is of a rather  
13 narrow political viewpoint, and that's the concern that I have  
14 about an issue as controversial as hunting mountain lions.

15           SENATOR CRAVEN: I don't know if we can take solace in  
16 this fact, but doesn't the fact that there are still deer roaming  
17 the hills, and mountain lions, and birds flying in the sky,  
18 reflect a certain attitude on the part of the Department as well  
19 as the Department's Commissioners that certain things have been  
20 provided? And if they hadn't been, they probably wouldn't be  
21 there; would they?

22           MR. YEATES: No, I feel uncomfortable quibbling with a  
23 supporter, but I think the reason we have mountain lions to a  
24 certain extent is that the Legislature put in place the 15-year  
25 moratorium. The Department wanted to issue 4700 permits in the  
26 late '60s for a population of maybe 600 lions. I think that's  
27 the reason you stepped in and said: Now, wait a minute.  
28





1           So, give yourself credit. I mean, we have protections  
2 in the law basically because the Legislature chose to do that.

3           I don't think the Fish and Game Commission has ever  
4 presented itself to be out front on an awful lot of issues.

5           So, I guess I don't. In some ways it was my reaction  
6 when I first came to California and learned that we had mountain  
7 lions was like: Wow! Amazing! I came from a state, Michigan,  
8 and I came from other states where there's a lot of wildlife, but  
9 we don't have any mountain lions. And they once were throughout  
10 the United States.

11          SENATOR CRAVEN: I see. Well, unlike the lady who had  
12 never seen one, I have. I lived in an area where there were a  
13 lot of mountain lions some years ago. Whether they're still  
14 there or not, I don't know, and that's Camp Pendleton. There  
15 used to be lots of mountain lions there, and also deer.

16          MR. YEATES: That's correct.

17          SENATOR CRAVEN: I don't know if they count the mountain  
18 lions, but they used to count the deer annually, so, I can relate  
19 to some of what you say.

20          But to all of you who have taken your time to appear to  
21 give us the benefit of your thinking on this very, very  
22 consequential issue, we are most appreciative.

23          Do you have something to say? I'm sorry, dear, I didn't  
24 mean to foreclose you. You're certainly welcome to come up, that  
25 is unless you're going to talk about mice.

26                           (Laughter.)  
27  
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1           SENATOR MELLO: Mr. Chairman.

2           SENATOR CRAVEN: Yes, sir.

3           SENATOR MELLO: I have to go next door. We have a  
4 school class there.

5           SENATOR CRAVEN: Very well.

6           SENATOR MELLO: I have no objection to you continuing  
7 on. If I get back in time, I do have a few questions.

8           SENATOR CRAVEN: Thank you, Senator Mello. We'll  
9 anxiously await your return.

10          Yes, sir.

11          MR. GRADER: Thank you, Senator Craven.

12          Unlike the previous speakers, I'm not here to speak  
13 about mountain lions.

14          SENATOR CRAVEN: Okay.

15          MR. GRADER: My concern is -- my name is Zeke Grader,  
16 and I'm with the --

17          SENATOR CRAVEN: Would you say that again?

18          MR. GRADER: Zeke Grader, and I'm with the Pacific Coast  
19 Federation of Fishermen's Associations.

20          I think our concern here today, like some of the  
21 previous speakers, is not with Mr. Murdy himself. In fact, I  
22 have found in my dealings with Mr. Murdy he's been both very  
23 courteous and polite to us, and I think attentive to some of our  
24 concerns.

25          I think our overall concern here is, though, is the  
26 growing imbalance that we're seeing on the Fish and Game  
27 Commission. I think there was an attempt a little over a decade  
28



1 ago to try and bring about some balance that we'd never before  
2 seen on the Commission, and I think what we're seeing right now  
3 is a tendency more towards an imbalance, and that is from a  
4 particular -- one particular group.

5 And I think in the commercial fishing industry, our  
6 concern is that there's a number of fisheries that are directly  
7 regulated by the Commission or the Commission has some bearing  
8 on: everything from the herring fishery, which it directly  
9 manages and which, incidentally, is now the most valuable fishery  
10 in the State of California. It's mostly all for export, the  
11 herring roe fishery. Sea urchin, which is of growing importance;  
12 the salmon in the respect to both the limited entry fishery and  
13 also now with the civil penalties in that fishery; abalone  
14 fishery; the anchovy fisheries; swordfish, to name a few.

15 Beyond that, the Commission of course hears license  
16 revocations, and more importantly, now in particular when we're  
17 dealing with the very touchy issue of the gill nets and looking  
18 in those areas where we've had to -- or closures have had to be  
19 imposed, of trying to develop experimental gear or alternative  
20 gear. And there the Commission plays a very important role, or  
21 at least should be playing a very important role, in the issuance  
22 of experimental gear permits to try and develop this type of  
23 alternative gear so we do maintain fishermen fishing as opposed  
24 to having them on the beach collecting unemployment.

25 I think this is our concern, is that with the trend that  
26 we have been seeing is that we are losing a balance in the  
27 Commission. I think this is going to be bad, perhaps, as others  
28





1 before me have said, for wildlife, but also it's going to effect  
2 some commercial interests, and mostly commercial fishing.

3 Again, our concern here is not with Mr. Murdy, as I  
4 said. We've been treated very courteously by him. I think if it  
5 was just him by himself, there would be no problems. You'd  
6 probably see us here in support of him.

7 However, I think our concern here is the balance now, or  
8 lack of it, on the Fish and Game Commission.

9 Thank you.

10 SENATOR CRAVEN: Very good. Thank you very much, Mr.  
11 Grader. I appreciate you coming.

12 Now the lady. There she is.

13 Would you state your name.

14 MS. FULTON: My name's Carol Fulton. I'm the Executive  
15 Director of Friends of the Sea Otter.

16 We have expressed major reservations about the  
17 confirmation of Mr. Murdy based primarily on his comments to me  
18 last January that he didn't think the sea otter should be on the  
19 threatened species list, which provides the otters their greatest  
20 protection under the law.

21 Since then, we've discussed our previous discussion, and  
22 he's told me that it was a misunderstanding, that what he meant  
23 was that he would like to see the otters recovered to the point  
24 where they could be de-listed.

25 That's a goal we all seek, but only when the population  
26 is truly no longer in jeopardy.

27

28



1           Thus, we would hope Mr. Murdy would take the opportunity  
2 he has here today to state clearly for the record, and clear up  
3 any potential for future misunderstanding, that he does  
4 understand and support the otter's current designation as a  
5 threatened species, and will work towards the recovery of this  
6 imperiled population.

7           We also note that according to this document which  
8 describes the role of the California Fish and Game Commission,  
9 that was prepared by the Commission itself, I'm quoting, it says:

10           "The Commission spends more of its  
11 time in dealing with matters of  
12 environmental quality, additional  
13 species protection, and rehabilitation  
14 of depleted populations than it does  
15 with matters of consumptive use."

16           One of California's depleted populations most in need of  
17 rehabilitation is the sea otter, still numbering only about 1500  
18 animals, less than 10 percent its former number, occupying only  
19 about 10 percent of its former range, a range at great risk from  
20 oil spills.

21           There is a remarkable opportunity to significantly  
22 dilute the oil spill risk to the sea otter through the  
23 establishment of a reserve breeding colony of otters at San  
24 Nicolas Island. That opportunity will come before the Fish and  
25 Game Commissioners this summer. It's the key element in the  
26 southern sea otter recovery plan, and it also carries with it  
27 provisions for zonal management of the sea otters in Southern  
28





1 California to reduce any potential competition with shell-  
2 fisheries.

3 We realize it would be inappropriate to ask Mr. Murdy to  
4 publicly commit in support of this proposal before it has been  
5 formally heard by the Commission, but we were alarmed at his  
6 preliminary comment to me that he was not supportive of  
7 translocation.

8 And we therefore would like to ask the Legislature to  
9 make it clear to Mr. Murdy that the Legislature expects people to  
10 put aside any preconceived personal views they may have on these  
11 issues and shoulder the responsibility they're voluntarily  
12 undertaking of joining ongoing State and federal efforts for the  
13 recovery and conservation of California's imperiled species.

14 SENATOR CRAVEN: If you translocate, that presumably  
15 means to move them to another --

16 MS. FULTON: A small group of otters, yes.

17 SENATOR CRAVEN: San Nicolas Island being one of the  
18 Channel Islands, there are, I suppose, beds or schools, I should  
19 say, of fish that are indigenous to that area there and that are,  
20 I suppose, prized by commercial fishermen.

21 Is that correct?

22 MS. FULTON: Well, the sea otter actually doesn't eat  
23 fish.

24 SENATOR CRAVEN: Well, they eat shellfish.

25 MS. FULTON: They eat shellfish, and so there are  
26 fisheries there would be competition with. And a recognition of  
27 that legitimate concern of bringing otters -- there's no place  
28



1 you could put otters where -- they need shellfish to survive, and  
2 there's no place where there's shellfish --

3 SENATOR CRAVEN: Don't otters have a rather voracious  
4 appetite for abalone?

5 MS. FULTON: Well, otters -- I don't like the word  
6 "voracious". They require 25 percent of their body weight a day,  
7 as I think is your concern. But they eat over 40-50 different  
8 species. Abalone is one, but most of the species they eat don't  
9 even have a scientific name for them. They're not -- I mean, a  
10 common name. They're not -- a lot of the species aren't even  
11 taken by people recreationally or commercially.

12 The ones that are in recognition of the fact that there  
13 is competition, that's why the animals would be restricted to the  
14 translocation site and not allowed throughout the rest of  
15 Southern California.

16 SENATOR CRAVEN: Very good. Thank you very much, Ms.  
17 Fulton.

18 Senator Doolittle, do you have any comment at all?

19 SENATOR DOOLITTLE: I don't have any questions.

20 SENATOR CRAVEN: Is there anyone else who wishes to  
21 speak to this issue?

22 There appears to be none.

23 There is no question in my mind, following the excellent  
24 testimony we have received today, that Mr. Murdy is very much  
25 aware of those things which create problems to those of you who  
26 have spoken. And I am confident that in his adjudication of  
27 these matters as he serves as a Commissioner, that he certainly  
28



1 will take that into consideration. I had no doubt that he would  
2 do that even before hearing the testimony, but I'm sure that this  
3 has brought it even closer to bear.

4 Mr. Murdy, as our Chairman has said, we will continue  
5 this next week, and at that time we will have Senator Petris with  
6 us, and Senator Petris probably has some questions. But he will  
7 be privy to those remarks that have been made by virtue of the  
8 fact that they, of course, have been transcribed. So, he will be  
9 able to catch up on what we have done today, and we will pick up  
10 at that point.

11 We thank you very much for being with us.

12 MR. MURDY: Thank you, Senator, for your courtesy.

13 SENATOR CRAVEN: Our pleasure.

14 Very well, next we'll turn to the Members of the  
15 Workers' Compensation Appeals Board, the first of whom is Jane  
16 O'Neill, Member, Workers' Compensation Appeals Board.

17 Is there any objection on the part of Senator Doolittle  
18 to having a photographer on the floor?

19 SENATOR DOOLITTLE: No objection, but I do have a  
20 question, Mr. Chairman.

21 SENATOR CRAVEN: Yes, Senator Doolittle.

22 SENATOR DOOLITTLE: I really question why we are going  
23 through all of this testimony when I suspect we'll have to have  
24 another hearing when all the Members are here. This is  
25 unnecessarily duplicative and is an imposition on the Members'  
26 time, and more than that, on the witnesses' time, all these  
27 people who've come up here.  
28





1           Is the intention to defer the vote on these other folks  
2 until next week?

3           SENATOR CRAVEN: I think that Senator Roberti, who  
4 should join us soon, will be of a mind to cast a vote on this  
5 matter before us presently. At least that would be my thought.

6           The point that Senator Doolittle raises is very germane  
7 and certainly a point very well taken. Sometimes the exigencies  
8 of the service here decree that Members must present themselves  
9 at other committees. As a matter of fact, I'm supposed to be at  
10 a Joint Rules Committee meeting right now, but I'm going to  
11 forsake that in order to have the pleasure of hearing from  
12 Ms. O'Neill.

13           MS. O'NEILL: Thank you.

14           SENATOR CRAVEN: Our pleasure.

15           MS. O'NEILL: I'm Jane Morgan O'Neill, and I'm a  
16 candidate for a position for the Workers' Compensation Appeals  
17 Board.

18           SENATOR CRAVEN: Would you get a little closer to that,  
19 please, so we can hear you better.

20           Would you tell us why you feel that you are qualified to  
21 serve in this very consequential post?

22           MS. O'NEILL: Well, I've been engaged in it exclusively  
23 for the last 12 years, the last 10 of which I was a Workers'  
24 Compensation Judge. So, I feel that I have some acquaintance  
25 with --

26           SENATOR CRAVEN: With the system.

27           MS. O'NEILL: -- with the system and the law.  
28



1           SENATOR CRAVEN: Very good.

2           Is there anyone here who wishes to speak in favor of  
3 this Nominee? There appears to be none.

4           Senator Doolittle.

5           SENATOR DOOLITTLE: Find out if there's any opposition;  
6 otherwise I'll move confirmation.

7           SENATOR CRAVEN: Very well.

8           Let us operate at this juncture as a subcommittee of the  
9 Rules Committee.

10          Mr. Fenton.

11          MR. FENTON: I'm not here in opposition. I'm here to  
12 make some comments.

13          SENATOR CRAVEN: Would it be appropriate that you make  
14 them at this time, Mr. Fenton?

15          MR. FENTON: It could be at the end. I'm not opposing  
16 the confirmation.

17          SENATOR CRAVEN: Because they would apply equally to all  
18 the candidates.

19          MR. FENTON: I'll wait until the end.

20          SENATOR CRAVEN: Well, I'll leave it up to you.

21          MR. FENTON: Doesn't matter.

22          SENATOR CRAVEN: All right, we'll pick it up at the  
23 trail.

24          We have a motion by Senator Doolittle on the  
25 confirmation of Jane O'Neill as a Member of the Workers'  
26 Compensation Appeals Board.

27          Will the Secretary please call the roll.  
28





1 SECRETARY WEBB: Senator Doolittle.

2 SENATOR DOOLITTLE: Aye.

3 SECRETARY WEBB: Senator Mello. Senator Petris.  
4 Senator Craven.

5 SENATOR CRAVEN: Aye.

6 SECRETARY WEBB: Senator Roberti.

7 SENATOR CRAVEN: We will take the two-zero vote as a  
8 subcommittee and refer it to the full committee when that  
9 committee is present.

10 Thank you very much.

11 MS. O'NEILL: Thank you.

12 SENATOR CRAVEN: Next we have Hazel Rogers, Member,  
13 Workers' Compensation Appeals Board.

14 Ms. Rogers, if you would please tell us why you feel  
15 qualified to serve?

16 I notice that our Chairman has returned.

17 We took, Mr. Chairman, a subcommittee vote on  
18 Ms. O'Neill, who just finished her testimony.

19 CHAIRMAN ROBERTI: Yes, let me speak to that, then I'll  
20 move to have the call lifted.

21 I think I read her resume, and I think she's very well  
22 qualified to assume this position.

23 I originally had indicated that I was not going to vote  
24 for gubernatorial appointments in labor areas until the Cal-OSHA  
25 matter was cleared up.

26 However, on reconsideration the law indicates that the  
27 Governor could reappoint someone else and the new term would just  
28



1 start as of the date of the reappointment. So quite frankly, for  
2 anybody from my point of view, trying to make the point that  
3 Cal-OSHA should be improved, and for that reason we should not,  
4 for policy reasons, appoint any of the members of the Workers'  
5 Compensation Appeals Board would be self-defeating.

6 With that in mind explaining my position to anybody in  
7 this world who would ever care to know, I would move that the  
8 call be lifted.

9 SECRETARY WEBB: Senator Mello. Senator Petris.  
10 Senator Roberti.

11 CHAIRMAN ROBERTI: Aye.

12 The vote is three to nothing; confirmation is  
13 recommended to the Floor.

14 SENATOR CRAVEN: Very well. That would apply to Ms.  
15 O'Neill.

16 CHAIRMAN ROBERTI: Right.

17 Ms. Rogers, we'll ask you the same question. I guess  
18 you heard it.

19 MS. ROGERS: Yes, I did.

20 I can only say my experience in the field would be the  
21 qualification I would expect to make me qualified, and that is  
22 almost 20 years of the practice of law in workers' compensation,  
23 and now the past 11 months as acting Commissioner on the Workers'  
24 Compensation Appeals Board.

25 CHAIRMAN ROBERTI: Any further discussion or debate?  
26 Any opposition?

27 SENATOR DOOLITTLE: Move confirmation.  
28



1 I've been informed that from the time of Governor Warren  
2 through Governors Knight and Brown, Sr., Reagan, and Brown, Jr.,  
3 there's always been one Member of the Board at least who has been  
4 from labor. Regardless of the Governor's philosophy, there's  
5 always been some philosophical mix on the Board in the past years  
6 so that all decisions didn't favor one group to the exclusion of  
7 the other; that is, the employer versus labor.

8 Now the Board has no one on it from labor, and yet the  
9 Governor's appointments are all conservatives, which, as I say,  
10 is his prerogative. We expect him to be that way.

11 But this coupled with the Governor's recent decision to  
12 do away with Cal-OSHA, which I authored, worries me very much  
13 because it seems to indicate, and I know the Governor very well  
14 and I hope I'm wrong, that he has very little concern for the  
15 health, safety, and well being of the California working men and  
16 women who constitute one of his largest constituencies. And I  
17 hope that I'm proven to be wrong.

18 Too, I hope that his appointees to the Board realize  
19 that the working men and women of the State are entitled to a  
20 fair shake. And I'm not saying they're not going to get it,  
21 Board Members' philosophy notwithstanding. It's the Board's  
22 decision it should not and do not consistently favor one group  
23 over another. This is the way the Boards are appointed by  
24 Governors of different philosophies have been in the past so, and  
25 hopefully will, by the present Board, including the three Members  
26 being appointed today, function in a similar manner.

27  
28





1 I just hope that that -- and I'm pretty sure it will,  
2 but I just want to make that observation.

3 Again I say, I have no problem. I know the three people  
4 and they're very well-qualified.

5 Thank you very much.

6 CHAIRMAN ROBERTI: Assemblyman Fenton, thank you. We  
7 appreciate your testimony in this regard.

8 Finally we have Mr. John Sullivan, Member of the  
9 Workers' Compensation Appeals Board.

10 We'll ask you the same question: Why you feel you're  
11 qualified to assume this position.

12 MR. SULLIVAN: I've had about 30 years in the field of  
13 Workers' Compensation in a number of jurisdictions, Mr.  
14 President. And in the past 11 months, of course, I've been, as  
15 one of the lay members of the Board, have been able to exercise  
16 some judicial experience and bring my experiences of over 30  
17 years in the field of Workers' Compensation to the Board. And I  
18 think we're able to assure Mr. Fenton that some fairness will  
19 certainly come out of this Board.

20 CHAIRMAN ROBERTI: Any further discussion or debate?  
21 Senator Craven.

22 SENATOR CRAVEN: I would move Mr. Sullivan's  
23 appointment, Mr. Chairman.

24 CHAIRMAN ROBERTI: Senator Craven moves Mr. Sullivan's  
25 appointment do pass and to the Floor.

26 Secretary will call the roll.

27 SECRETARY WEBB: Senator Doolittle.  
28



1           SENATOR DOOLITTLE: Aye.

2           SECRETARY WEBB: Senator Mello. Senator Petris.

3 Senator Craven.

4           SENATOR CRAVEN: Aye.

5           SECRETARY WEBB: Senator Roberti.

6           CHAIRMAN ROBERTI: Aye.

7           The vote is three to nothing; confirmation is  
8 recommended to the Floor.

9           Thank you.

10           (Thereupon this portion of the Senate  
11 Rules Committee hearing was terminated  
12 at approximately 4:15 P.M.)

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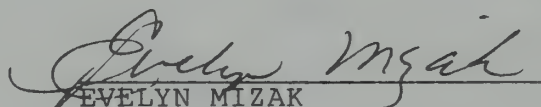
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That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 19th day of March, 1987.

  
EVELYN MIZAK  
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STATE OF CALIFORNIA

*Legislative*

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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JIM ELLIS

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

MEMBERS ABSENT

NONE

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

ROXANI M. GILLESPIE  
Insurance Commissioner

WALTER A. ZELMAN, Executive Director  
California Common Cause

JULIE CARDENAS  
Center for Public Interest Law

JUDITH BELL, Director of Special Projects  
Consumers Union

SHARON KALEMKIARIAN, Director  
Insurance for Child Care Project

STEVEN MILLER, Executive Director  
Insurance Consumer Action Network (ICAN)





# I N D E X

## Page

Proceedings

1

### Governor's Appointee:

ROXANI M. GILLESPIE  
Insurance Commissioner

1

Questions by SENATOR MELLO re:

Medigap Insurance

4

Excessive Insurance Rates

6

Ban on Fraudulent Insurance Policies

7

Question by SENATOR CRAVEN re:

Fraudulent Policies

7

Questions by SENATOR CRAVEN re:

Insurance Licensure

10

Actions of Other States

11

Questions by SENATOR PETRIS re:

Insurance Antitrust Immunity

14

Reporting of Investment Income

16

Enforcement Tools for Advertising Fraud

18

Excessive Rates

19

Penalties for Excessive Rates

20

Advisory Rates

21

Busy Telephone Lines at Department

22

Mission Insurance's Insolvency

24

Appointment of Liquidator

25

Advance Alert on Insolvencies

27

Insolvency Monitor List

28

Recess

28



I N D E X (Continued)

Page

Resumption of Proceedings	29
Questions by CHAIRMAN ROBERTI re:	
Insurance Antitrust Immunity	29
Rate Fluctuations	30
Earthquake Insurance	32
Data Used for Setting Premiums	34
Controlling Premium Fluctuations	35
<u>Witnesses with Concerns or in Opposition:</u>	
WALTER ZELMAN, Executive Director California Common Cause	36
Consumer Advisory Panel	37
1986 Memo	38
Questions by SENATOR PETRIS re:	
Improvements in Department	40
Rebuttal by MS. GILLESPIE to '86 Memo	41
JULIE CARDENAS, Member Consumer Advisory Panel and Center for Public Interest Law (CPIL)	42
Cancellation of Panel Meetings	42
Questions by SENATOR CRAVEN re:	
Origins of CPIL	43
Scope of Advisory Panel	43
Report Filing with Department	45
Request for Definition of Panel's Role	46
Question by SENATOR ELLIS re:	
Founder of CPIL	47



I N D E X (Continued)

	<u>Page</u>
JUDITH BELL, Director of Special Projects Consumers Union	48
Regulator versus Enforcer	48
Questions by SENATOR CRAVEN re:	
Definition of Witness' Phrase	49
Penalty Jurisdiction	50
Proper Aggressiveness	50
Questions by SENATOR MELLO re:	
Cease and Desist Loophole	52
Certificate in Lieu of Policy	53
Department's Consumer Guide	53
Chubb Insurance Company & Earthquake Insurance	53
Questions by CHAIRMAN ROBERTI re:	
Department's Response to Chubb	54
Response by MS. GILLESPIE	54
Questions to MS. GILLESPIE by SENATOR PETRIS re:	
North Carolina's Response	55
Violations of Statue re: Earthquake	56
Insurance Pooling	57
SHARON KALEMKIARIAN, Director of Insurance Child Care Project	58
Department's Attitude on Child Care Insurance	58
Calcare Program	59
Market Forces	60
Investigation into Rates	61
Questions by SENATOR PETRIS re:	
Reasons for Insurance Pullout	61
Monies Paid Out	62





I N D E X (Continued)

	<u>Page</u>
Question by SENATOR CRAVEN re:	
History of Aversion to Underwriting Children	63
Senate Bill 1102	64
STEVEN MILLER, Executive Director Insurance Consumer Action Network (ICAN)	
Opposition to Confirmation	65
Excessive Rates	65
Public Records Request	67
Department's Position on Current Legislation	67
Questions by SENATOR PETRIS re:	
Profits of Insurance Industry	68
Request for Insurance Figures	69
Policy Appointing Authority	69
Questions by CHAIRMAN ROBERTI re:	
Commissioner's Authority on Rate Fixing	71
Issuance of Guidelines by Commissioner	71
Questions by SENATOR PETRIS re:	
Immunity Problem	72
Penalty	72
Questions by CHAIRMAN ROBERTI re:	
Rates Based on Outside Investments	73
Failure to Advocate	73
Department Memo Restricting Communication	75
Rebuttal by MS. GILLESPIE re:	
Memo	76
Positions on Legislation	77



I N D E X (Continued)Page

Questions by SENATOR PETRIS re:

Consumer Advisory Panel

77

Cancellation of Panel Meetings

78

Position on Legislation

79

Child Care Insurance

81

Motion

83

Committee Action

83

Termination of Proceedings

84

Certificate of Reporter

85





P R O C E E D I N G S

--oo0oo--

CHAIRMAN ROBERTI: Governor's Appointee appearing today, Roxani M. Gillespie, the Insurance Commissioner.

Ms. Gillespie, please come forward.

We'll ask you what we ask all the Governor's Appointees, and that is why you think you're qualified to take on this position.

MS. GILLESPIE: I am Roxani Gillespie, and I have been working for the state since May of 1983, first as Chief Deputy Insurance Commissioner and then I was appointed Insurance Commissioner by the Governor effective July 1, 1987 [sic].

Since taking office, I have done several things which I want to very briefly outline for you.

My major concern when I joined the Department was to strengthen the Department of Insurance and make sure that it had the resources necessary in order to do the job that it was supposed to do. With the help of the Legislature and the Governor, the Department of Insurance has been growing consistently since 1983, and we are now in much better shape than we have ever been before.

I formed the Consumer Affairs Division of the Department of Insurance which is an umbrella organization that has all the consumer services, all the responsibilities with the consumer services with the Department of Insurance. And I'm very proud of the things that they have accomplished in terms of responsiveness to consumer problems in what has been a very difficult time, as obviously everyone knows.



1 I have done what I think has been very important in  
2 bringing about a much more public process in insurance. Since I  
3 became Commissioner there has been an almost unprecedented number  
4 of public hearings on such issues as rate, commercial rates, on  
5 issues such as availability and affordability. We just had such  
6 a hearing just a few days ago. Another one is scheduled on  
7 June 3rd whereby we will be trying to do something very new and  
8 very different with regards to commercial rates for insurance.

9 I have taken a very aggressive approach with regards to  
10 the California Automobile Assigned Risk Plan, particularly with  
11 regards to the inner city particularly in the south, which is  
12 where we have most of the problems, and have tried to bring about  
13 a situation where consumers can at least find insurance that is  
14 lower priced than in any other vehicle that is available to them  
15 in that territory.

16 I also have taken a very aggressive approach with  
17 regards to my responsibilities and the powers that the Insurance  
18 Commissioner has. Effective November of 1986, insurance  
19 companies have to notify the Department of Insurance when they  
20 want to raise their rates by 25 percent or more, and they have to  
21 justify to us why they want to do it.

22 The other action that I intend to take is with regards  
23 to commercial rates whereby I am questioning the advisability of  
24 the Insurance Services Office to issue advisory rates. I don't  
25 know how successful I will be in doing that on a voluntary basis,  
26 but it certainly is a very aggressive measure that I intend to  
27 take.  
28





1 Finally, I have tried very hard to communicate with you,  
2 the Legislature, what I have been doing. Prior to coming here, I  
3 counted the number of releases that we have left in your  
4 mailboxes since I became Commissioner. I counted 28. I have  
5 tried very hard to keep you apprised of what I've been doing.

6 And I guess from here I stand ready to answer any  
7 questions that you may have.

8 CHAIRMAN ROBERTI: Thank you, Ms. Gillespie.

9 Any questions of Ms. Gillespie? Senator Mello.

10 SENATOR MELLO: I'll cover the area. First of all, I  
11 agree you are certainly much more aggressive in the public  
12 process and public hearings, but my real concern is what has  
13 happened from the result of your aggressiveness and public  
14 hearings that have actually resulted in better management of  
15 insurance in California?

16 Let me preface that a little bit by what I'm getting at:  
17 Medigap insurance for senior citizens. Bonnie Burns who  
18 testified is a special consultant to our committee, and we've  
19 held hearings, and we've had as many as 53 policies held by a  
20 single person because of Danny Thomas, Loren Green and all these  
21 people on t.v. that are selling it through t.v. and mail order in  
22 California. I can show you documentation of people that have  
23 bought 20, 30 and 40 different policies, they're so frustrated.  
24 Yet I don't think your office has done anything to stop the  
25 ripoff of these Medigap policies.

26 I think personally they're worthless. They're not worth  
27 the stamp that's put on the mail that they mail them to you on,  
28 with maybe some minor exceptions.





1 I commend you for all the public hearings, but they're  
2 made to get information in. I'm anxious to see what have you  
3 done to stop this ripoff to California senior citizens now taking  
4 place?

5 MS. GILLESPIE: Senator, I will be glad to furnish you  
6 with a list of the entities against whom cease and desist orders  
7 have been issued in this time. I think there are over two dozen.  
8 My recollection is that it's closer to thirty at this point.

9 I will issue -- I will give you the list --

10 SENATOR MELLO: Do you --

11 MS. GILLESPIE: -- of these cease and desist orders.

12 SENATOR MELLO: But how many of them have stopped?

13 MS. GILLESPIE: Well, if there is a repetition, then  
14 obviously it's a lot easier to come across with a much harder  
15 process the second time around.

16 SENATOR MELLO: I'm not going to let you off the hook  
17 very easily because this is something that really is of big  
18 concern.

19 How many --

20 MS. GILLESPIE: You obviously are aware of someone that  
21 has continued in spite of the cease and desist order, and I guess  
22 I am not. If that is the case, I certainly want to know about  
23 it.

24 SENATOR MELLO: What I'm asking you is, how many people  
25 have you stopped from selling Medigap insurance in California?

26 MS. GILLESPIE: And what I know is that the Department  
27 of Insurance in the last few months has issued almost 30 cease  
28 and desist orders ordering people to stop doing this.



1           SENATOR MELLO:   How many have stopped?

2           MS. GILLESPIE:   To our knowledge, they have.   If that is  
3 not the case, then we wish to know that that has not happened.

4           SENATOR MELLO:   Don't you follow up when you issue a  
5 cease and desist order to see whether or not they're abiding by  
6 it?

7           MS. GILLESPIE:   Yes, but on the other hand, they may not  
8 necessarily tell you.   They may do things behind our back.   And I  
9 am wondering if you have any knowledge that I do not possess.   I  
10 don't know.

11          SENATOR MELLO:   I'll get it.   I don't have it here with  
12 me today, but I'm in contact with people that we deal with, and  
13 this continues to be a giant ripoff.

14          In fact, beyond Medigap, the insurance crisis in  
15 California I think is one of our major crises that we have.  
16 Right now we're talking about more funding for education,  
17 Medi-Cal cutbacks, transportation, but the one that stays on and  
18 on and a real high level of interest is insurance:   liability  
19 insurance and casualty insurance, automobile insurance, and  
20 everything that's under your jurisdiction.

21          I'll tell you, out there in my district there's a lot of  
22 people that are concerned about the way the State of California  
23 is managing its responsibility in the sale of insurance in this  
24 state.

25          I want to say secondly that I don't think all of it  
26 should fall on the State of California.   Some of our federal laws  
27 give them, you know, the antitrust regulations and some of the  
28



1 other things that are handled on a federal level, the fact that  
2 they don't have to disclose their earnings or their reserves, it  
3 puts us in a difficult position of trying to regulate them.

4 But I see more people come screaming at me about their  
5 insurance has gone up 400-500 and 4,000 percent, and senior  
6 citizens clutching a whole handful of insurance policies.

7 Now, if we can't stop that, then there's something  
8 really wrong.

9 MS. GILLESPIE: We are trying. And what you have to  
10 realize, too, is that I became Commissioner in July. I formed a  
11 task force in August. Some of the things that we are doing now  
12 are going to take a few months before they actually come into  
13 fruition.

14 One of the things that we are doing now, for instance,  
15 is we're conducting a lot of market conduct examinations in the  
16 insurance companies' offices. Those do take a while. So, it is  
17 going to be a long-term process.

18 Now, what we tried to do right away is things with  
19 visibility that would stop some of these things, like the cease  
20 and desist orders, but there are some other things coming down  
21 which are going to take longer. But I am going to provide you  
22 with a complete list of all the actions that have been taken.

23 Now, there are still, as I say, a lot that are  
24 continuing and are ongoing, and we'll be glad to provide you with  
25 what else we're doing.

26 SENATOR MELLO: I want Senators Craven and Ellis to know  
27 that this is not -- we had the same problem with the previous  
28







1 administration, and this is not something that I'm bringing up  
2 here today.

3 But it just seems like either California doesn't have  
4 the ability, or we don't have people administering the laws that  
5 we can regulate and curb the fraud that's going on in insurance  
6 throughout our state, especially with this Medigap insurance  
7 that's sold, as you know, by mail and television.

8 MS. GILLESPIE: Well, on Medigap, I'll tell you, we even  
9 got a letter from Senator Pepper congratulating us for the work  
10 that we have done.

11 California actually has the reputation at the federal  
12 level of being the most aggressive state in the nation, which  
13 doesn't mean anything because if the problem is large, obviously  
14 the fact that we're the most aggressive if we're not aggressive  
15 enough is no good.

16 SENATOR MELLO: Well, I'll get from Bonnie Burns and  
17 others some information.

18 MS. GILLESPIE: I would really appreciate that.

19 SENATOR MELLO: You have a lot of it already, but  
20 instead of just ordering a cease and desist order, I think we  
21 ought to have a complete ban on the sale of these fraudulent  
22 policies that are ripping off thousands of our senior citizens in  
23 this state.

24 CHAIRMAN ROBERTI: Senator Craven.

25 SENATOR CRAVEN: Henry, I don't know that I actually  
26 understand what you mean when you say "fraudulent policies",  
27 because if they were in effect fraudulent, wouldn't they be in  
28 violation of the law ipso facto?



1           SENATOR MELLO: Let me give you an example, Senator  
2 Craven.

3           One policy sold out of Massachusetts pays all of your  
4 acute care costs from the 151st day forward. That's being sold  
5 here in California.

6           The truth is, very few people stay in a hospital more  
7 than three or four days. It's a rare situation that's almost  
8 unheard of when somebody -- we checked to see with the Hospital  
9 Association how many patients actually, and they couldn't find  
10 any.

11           So what I'm saying, that is fraud when they sell  
12 something that no one can cash in on because the threshold is so  
13 high. If they'd come up and really back up Medicare, that's one  
14 thing. But that's one example.

15           The other thing is --

16           SENATOR CRAVEN: Suppose you had what we generally refer  
17 to as a catastrophic disease or illness? Couldn't you log in 150  
18 days?

19           SENATOR MELLO: No, because people who are terminally  
20 ill with catastrophic illness, cancer or some other, are usually  
21 put into a hospice or a nursing home. Actually, only three  
22 percent of the senior citizens ever have the kind of catastrophic  
23 illness that would require help under the new plan they're  
24 pushing.

25           What is needed is long-term care and skilled nursing  
26 home. These policies that are alleged to provide long-term care  
27 in fact don't do it.  
28



1 Others will say they'll pay for everything in acute  
2 care. See, the purchaser out there is frustrated because they've  
3 got a little nest egg here, but it's fastly disappearing. Now,  
4 acute care is hospital care. It doesn't pay anything for skilled  
5 nursing care which is what they think they're buying. They think  
6 they're buying convalescent care at a skilled nursing home.

7 SENATOR CRAVEN: Is that something that's advertised on  
8 television?

9 SENATOR MELLO: Oh, yes. What they do is, they pick  
10 very fine people who are well-known, like Danny Thomas, Loren  
11 Green. What are some of the names of some of the others?

12 MS. GILLESPIE: The President's relative, Mr. Roosevelt.  
13 There's a lot of that. That's absolutely correct.

14 SENATOR MELLO: And finally, the other thing is, most of  
15 these are sold by the same salesperson. He sells 15 or 20  
16 policies to one unsuspecting buyer. That's why more counseling  
17 is needed to the purchasers, but I think all the counseling in  
18 the world is not going to stop the ripoff. It's going to have to  
19 be heard right here in the Legislature. We have to just get  
20 tough with these kinds of what I call real fraud.

21 MS. GILLESPIE: There is a very large consumer's guide  
22 that is at the printers from the Department of Insurance right  
23 now, and with the help from the Speaker we hope to get it out  
24 within the next few weeks which should be helpful in the kind of  
25 thing that you're saying: What is the actual benefit of some of  
26 these things.

27 SENATOR CRAVEN: Well, I have a question.  
28







1 Now, if the XYZ Company, who may be the sellers of that  
2 which Senator Mello has mentioned, they are obviously licensed to  
3 do business in the State of California. And presumably, again,  
4 they are licensed based on the fact that what they have done  
5 heretofore prior to the submission of their application for  
6 licensure has been in keeping with the high standards of the  
7 industry. Now, you then issue them a license based on past good  
8 performance.

9 Now if they come up with a new scheme or plan, or  
10 whatever, do they have to come back to you and say, "This is what  
11 we're going to do now," and let you pass a judgment on that? Or  
12 does their licensure allow them to do anything they choose until  
13 you take an affirmative act to stop them?

14 MS. GILLESPIE: Senator, it depends on the product, and  
15 it depends on the types of things that they intend to sell.

16 The State of California reviews certain types of policy,  
17 but not all. So it would depend entirely on the specific  
18 products.

19 SENATOR CRAVEN: I see. Well, my thought is that  
20 obviously when Loren Green or whomever it may have been comes in  
21 with a very sincere approach to people his age and older that  
22 this is a good deal, that has not necessarily gone through your  
23 hands or before your eyes; has it?

24 MS. GILLESPIE: No, it has not.

25 SENATOR CRAVEN: So if after Senator Mello comes to you  
26 and says, "Ms. Gillespie, I think this is fraudulent," then do  
27 you begin an investigation of it? And if you would agree with  
28



1 Senator Mello's contention, then you have the court issue a cease  
2 and desist order on that? Is that the way it works?

3 MS. GILLESPIE: That is correct. Actually, it's done  
4 through an administrative process.

5 Right now the Department of Insurance is in the process  
6 of actually going over all the advertisements in this area, which  
7 is a huge project --

8 SENATOR CRAVEN: I see.

9 MS. GILLESPIE: -- in order to come up with some  
10 regulations that can be comprehensive and on a go forward basis  
11 to put some type of parameters against the kind of abuses that  
12 Senator Mello has been talking about.

13 SENATOR CRAVEN: Do you know, and I'm just again with  
14 one presumption after another, but I must presume that those  
15 commercials are made to run in the states of Missouri, and  
16 Kentucky, and Virginia, and Massachusetts just as well as they do  
17 in California.

18 Do you know to this time of any other state taking an  
19 against against that company that Senator Mello has referred to?

20 MS. GILLESPIE: I don't, but I'm afraid, Senator, that  
21 that doesn't mean that that may not have been the case.

22 SENATOR CRAVEN: So it's safe to say that there's no  
23 real networking among Insurance Commissioners of the states?

24 MS. GILLESPIE: There is some, but I am not necessarily  
25 totally up to date on all the actions that they have taken.

26 I know that the State of Washington has been very  
27 aggressive in this area as also the State of Florida. Obviously  
28



1 they have in Florida also a lot of concern. They have a lot of  
2 senior citizens. I know that Arizona has been active. I don't  
3 know specifically what those states have done though, I'm afraid.

4 California, as I say, has the reputation of being the  
5 one that is the most aggressive.

6 SENATOR CRAVEN: Senator Mello, have you finished your  
7 comments?

8 SENATOR MELLO: Yes, I have, Senator.

9 Let me just point out that with the NCSL, National  
10 Conference of State Legislators, this is a high priority. I've  
11 been attending some seminars. We're trying to get all the states  
12 to work together because, as I said earlier, a lot of this is in  
13 interstate commerce, and a lot of it is the so-called federal  
14 preemption. But I think we have to get tough on a state by state  
15 level until our friends in Washington actually put a curb to  
16 this. There is a movement going on.

17 SENATOR CRAVEN: Very good. Senator Petris.

18 SENATOR PETRIS: I think our questioning was somewhat  
19 limited the first time around. Now that you've been there a  
20 year, you're going to get the business.

21 I've had some excellent reports, and I want to join  
22 Senator Mello in commending you on your vigor in those public  
23 hearings and really alerting the public and us on the excessive  
24 rate area. There are a lot of other areas that need attention.

25 Let me start with the excessive rates. What are the  
26 tools that you presently have? What power have we given the  
27 Commissioner?  
28







1           Let me preface it with this: I'm not happy with our law  
2 structure in this state relating to the insurance industry at  
3 all. That's common knowledge here in the building, at least in  
4 the Judiciary Committee where we get a lot of these things.

5           My unhappiness stems from the fact that, number one, I  
6 believe the so-called insurance crisis is based on fraudulent  
7 representations by a substantial part of the industry as to what  
8 is really going on coupled with their refusal to show us the  
9 books and prove what's going on. That's why I've introduced a  
10 bill that gives you authority to relate to us information that  
11 they file with you on their profits and losses, and so on and so  
12 forth. We've discussed that, and I'm grateful for your support  
13 of that bill.

14           With that bias with which I approach the industry, I  
15 hear so many reports that premiums are sky rocketing in certain  
16 areas -- child care centers, a skating rink in my district which  
17 had 20 years of experience with one family owner, not one claim.  
18 The premium jumped from 3,000 to 120,000 in one year. I hear  
19 similar reports from other states.

20           I look at all this stuff, and I ask myself why does this  
21 industry enjoy immunity from antitrust legislation from Congress,  
22 I think, in 1948 and from the State of California as far back as  
23 1945? Shouldn't we be taking another look?

24           It may be that the immunity at that time was necessary.  
25 Maybe it was helpful. You know, we enact things that are helpful  
26 at the moment, then we bury them and forget about them and they  
27 outlive their usefulness. And in the long run, they often turn  
28 out to do a lot of harm instead of good.



1 I think that we've reached that point here with the  
2 insurance industry.

3 So my first question is, before I get back to the  
4 excessive rates, what is your feeling on the present status of  
5 this immunity? Do you think it should be reviewed? Do you have  
6 a program yourself? Do you think it ought to be repealed so that  
7 that extraordinary power they have and that separate  
8 classification is taken away from them? Do you think that would  
9 be an improvement in the market place for the benefit of the  
10 consumer?

11 That's a lot of different questions, but let me stop  
12 there for the moment.

13 MS. GILLESPIE: Obviously that is a very critical issue  
14 that is before the California Legislature this year, and it has  
15 been there for some prior years too to my knowledge.

16 Personally, I have no objection to seeing the insurance  
17 industry live under the same guidelines as any other industry.  
18 But I do want to mention certain things because I think they are  
19 important.

20 First of all, it is an extremely competitive industry,  
21 and that is true. It really is very, very competitive. The  
22 current status of the law does not permit them to do anything --  
23 let's see, what is it -- conspire, or coerce, or intimidate, that  
24 language is there.

25 The one area, Senator, that gives me trouble that exists  
26 in the law now, and I think if we were to change would make a  
27 difference, is the whole area of advisory rates of the Insurance  
28



1 Services Office being permitted to issue advisory rates. I think  
2 that is wrong.

3 I think that it's very important, and if we repeal the  
4 antitrust immunity, I think it's very important for us to find a  
5 way that the insurance industry can somehow pool lost cost  
6 information. That is very, very important. Otherwise, we are  
7 going to lose a lot of small players which are very good for the  
8 market. Small players have often done a lot of good things in  
9 California. They tend to operate with smaller margins, and they  
10 tend to be aggressive in certain market niches that they fit.  
11 And if we do away with that possibility of pooling, we're going  
12 to destroy a segment of the industry, or at least inhibit in my  
13 opinion a segment of this industry which I think is very  
14 important to us.

15 But on the other hand, I think that those advisory rates  
16 are wrong. I truly do. And even though they are not often used  
17 in California, this may not be true with other states and I'm  
18 speaking of California only, they do have a propensity to be  
19 redundant, and in particular, market niches can cause trouble if  
20 there are not enough carriers interested in writing that product  
21 because those rates are redundant. They don't calculate  
22 investment income. And on top of that, they have five points of  
23 profit in addition to the investment income, which is there, and  
24 they have an expense factor which, in my opinion, is not  
25 competitive.

26 So I believe that those advisory rates truly have to be  
27 addressed specifically.  
28







1           The rest of the Cartwright Act, I cannot tell you that I  
2 truly understand enough to know whether it's going to make a  
3 significant difference or not, but I do think that that specific  
4 area needs to be looked at.

5           SENATOR PETRIS: I think you've answered the question.  
6 We ought to take a look at it, which means what? Legislative  
7 inquiry, executive review and recommendation the Legislature?

8           MS. GILLESPIE: We are going to be hold a hearing on  
9 this issue on June 3rd, and I will be coming up with a  
10 recommendation very quickly.

11           SENATOR PETRIS: You mentioned including investment  
12 income. One of the deceptive practices has been exactly that.  
13 They don't talk about investment income at all, and yet that  
14 income is earned on the premiums paid by the policy holder, who  
15 is a consumer. They show staggering losses in a limited area and  
16 don't show, at least not in their public releases, they might  
17 show it in the reports filed officially with the government both  
18 state and federal, but in their public discussions the income on  
19 investment is either soft pedaled or totally omitted and a very  
20 narrow view is given to the public to extract tears from the  
21 public and legislative support for solving the so-called tort  
22 crisis by limiting the amount to be paid to people who have  
23 really been injured by the wrongful deeds of some people in our  
24 society.

25           With respect to that, would you support a requirement  
26 that would change the form and structure of the reports that they  
27 file, and honesty in the report by the company, so that both of  
28 them are given proper attention? How can we correct that?



1 MS. GILLESPIE: Senator, I would be delighted to work  
2 with your office in that regard. We have our first report that  
3 is going to be made to you soon on the issue of the financial  
4 results, and maybe we can work with your staff then to find other  
5 ways that reports can be made so that they are clearer.

6 The problem that we have is that we tend to view  
7 companies on a liquidation basis. They have to be very liquid in  
8 order to pay their claims. And statutory accounting for that  
9 reason is different from the kind of accounting that everybody  
10 understands.

11 On the other hand, that is not a reason why things need  
12 to be hidden and misunderstood. And I will be delighted to work  
13 with you in finding other ways to collect information and report  
14 it so that it does portray a more understandable picture of what  
15 is actually going on.

16 SENATOR PETRIS: I'm very much interested in that. Most  
17 of the bills I've carried in the last three years or so really  
18 aimed at flushing out information, flushing out accurate  
19 information so that all of us have a better idea of what's going  
20 on, and with that as a basis, we can engage in a more intelligent  
21 discussion on the problem if there is one. So I'd like very much  
22 to follow up with you on that.

23 Let me go back now to the tools. Suppose you're  
24 watching a commercial as described by Senator Mello, and you know  
25 it's fraud. They're victimizing elderly people who are  
26 frightened. Survey after survey have shown that the number one  
27 fear of the elderly -- well, top three; sometimes it's crime.  
28



1 But one of the top three great fears of the elderly is  
2 catastrophic illness. Whenever they see a slick commercial that  
3 promises all this protection, they're going to go for it.

4 Now, if you're sitting there as the Commissioner, and  
5 you see such an ad, and you are convinced on the basis of facts  
6 you already have that that type of an ad is fraudulent, what can  
7 you do? Do you send them a letter? Do you go to the Attorney  
8 General? What do you do to put a stop to it under the present  
9 law?

10 MS. GILLESPIE: We have tried to work with the Attorney  
11 General, too, in this area, and they have been very helpful to  
12 us. But unfortunately, it's a difficult area. It truly is in  
13 terms of what is appropriate. You know, you have the free speech  
14 kinds of arguments.

15 It's a difficult area, Senator, and this is why, you  
16 know, we are reviewing the whole thing right now. You can't  
17 believe the carloads of tapes that are in the office right now.  
18 We're trying to see what is happening so that we can come up.  
19 And maybe, you know, it will take legislation, and it's not an  
20 area that we can deal administratively with. I can't tell you  
21 that.

22 SENATOR PETRIS: Are you having hearings on those things  
23 too?

24 MS. GILLESPIE: Not right now. Right now we're doing  
25 homework.

26 SENATOR PETRIS: What are the tapes? Are the tapes  
27 interviews?  
28







1 MS. GILLESPIE: No, the tapes are things that they have  
2 submitted to us at our request so we can see what they're doing,  
3 all of them, in bulk. We have asked for --

4 SENATOR PETRIS: Tapes of advertising?

5 MS. GILLESPIE: Yes, and we have hired --

6 SENATOR PETRIS: So you are looking into that now.

7 MS. GILLESPIE: That's right.

8 SENATOR PETRIS: Well, that's another major improvement.  
9 I don't know of any effort in the past to do that.

10 Now, what about excessive rates? Again, based on the  
11 information you have as a Commissioner, you get information that  
12 Company XYZ is obviously gouging. Do you have any power under  
13 the present law to do anything?

14 MS. GILLESPIE: Yes, we do. The way that the statute  
15 currently reads is that two requirements have to be met: that  
16 the rate has to be excessive in relation to the product, the  
17 coverage being offered; and that there is no competition in that  
18 particular product.

19 But actually, Senator, in practice what really happens  
20 is that in cases where the Department has rolled back rates, it  
21 was for reasons which are much more technical than what the law  
22 currently permits. It's for reasons of unfair discrimination  
23 among policy holders; it's for reasons of excessive types of  
24 debits or credits within a certain plan; and it's other kinds of  
25 very technical things that we get into.

26 Right now we do have this directive in operation whereby  
27 we examine all the rates that are presented to us that have been  
28



1 increased by 25 percent or more. There are instances in that  
2 group to my knowledge where, again, we have been able to roll  
3 rates back in that area too.

4 SENATOR PETRIS: How do you do that? Pursuant to a  
5 hearing? Do you have a hearing on it?

6 MS. GILLESPIE: On those specific 25 percent, no we do  
7 not. We receive the filing and we write back and tell them to  
8 roll it back.

9 SENATOR PETRIS: How many instances of that have you  
10 had?

11 MS. GILLESPIE: We do have them. I can't tell you  
12 exactly how many because they happen continuously. Now, there is  
13 an Auditor General's report, a legislative Auditor General's  
14 report, that has gotten into this area, and you will be receiving  
15 a report from them as far as our work in that area is concerned.

16 In addition to that, we have that other process of the  
17 filing for the 25 percent, and I will be glad to tell you how  
18 many that are currently -- that have been done since November. I  
19 will be glad to submit that to you.

20 SENATOR PETRIS: I take it it's not an infrequent thing  
21 now?

22 MS. GILLESPIE: No.

23 SENATOR PETRIS: Is there any penalty that you can  
24 impose?

25 MS. GILLESPIE: The way that the law currently works is  
26 that as long as compliance is voluntary, there is no penalty.  
27 Penalties start occurring if there is no voluntary compliance.  
28



1           SENATOR PETRIS: What if you have a pattern of every  
2 time the company files a report on the rates, it's beyond the 25  
3 percent? You get 5, 10 times in a row.

4           MS. GILLESPIE: Well obviously, then, you would need a  
5 public hearing if you have a situation like that. My feeling is  
6 that they would avoid it long before it got to that. But we  
7 don't have an instance of that in my experience.

8           SENATOR PETRIS: So that's means it's being effective,  
9 then, the way you're doing it now?

10          MS. GILLESPIE: I feel so.

11          SENATOR PETRIS: Is the advisory rate done by the  
12 Consumer Advisory Panel? Is that what it's called?

13          MS. GILLESPIE: Advisory rate?

14          SENATOR PETRIS: You mentioned an advisory rate.

15          MS. GILLESPIE: Oh, that's the Insurance Services  
16 Office. That's an industry organization.

17          SENATOR PETRIS: That's the industry.

18          MS. GILLESPIE: That's the industry.

19          SENATOR PETRIS: That doesn't come out of your office?

20          MS. GILLESPIE: No, no. It comes out of the industry.

21          SENATOR PETRIS: Or the Citizens' Advisory Committee?

22          MS. GILLESPIE: No, no, no. It comes out of the  
23 industry.

24          SENATOR PETRIS: How can we eliminate that? Just outlaw  
25 it?

26          MS. GILLESPIE: Well, I think we're going to have to  
27 have legislation on that. I don't think that I have the power to  
28 stop that on the basis of the current statute.





1           SENATOR PETRIS: You would welcome that kind of  
2 legislation?

3           MS. GILLESPIE: Absolutely.

4           SENATOR PETRIS: Well, I have some more but I think  
5 there's some witness who probably want to appear.

6           Let me ask about one thing that always bothers me when I  
7 call a government agency. It probably bothers my constituents  
8 when they call me. At any rates, it's the telephone.

9           One of the consumer groups has been trying to get  
10 through over a period of time in different areas, and they found  
11 a 93 percent busy in one department within your shop, and in  
12 another one almost 100 percent. One of them is, I think, the  
13 Consumer Action Line where you call in, then it's referred,  
14 bounced over, to Sacramento and you can hardly ever get in there.

15           It's kind of like the IRS. I don't know why anybody  
16 would want to call the IRS, but I find I have to call them often.  
17 And Immigration Service I have to call often. You can never get  
18 them. There just don't ever seem to be enough phones. I don't  
19 know whether they have one or 100.

20           They find the same problem pertaining here. Now they  
21 also report that there's been some improvement in the past few  
22 months.

23           Can you tell us what's going on there?

24           MS. GILLESPIE: Absolutely. We started a very  
25 aggressive telephone program a few months ago. We obtained an  
26 800 number and some very sophisticated equipment. We got, I  
27 think, it was about a million dollars in order to do this.  
28



1           SENATOR PETRIS:   How many?

2           MS. GILLESPIE:   A million dollars.   I think that was  
3 last year.   There was a particular period when the equipment was  
4 not working.   Steve Miller of ICAN, I think, is the one who was  
5 -- who mentioned that to us at the time, that he kept getting  
6 busies even though operators were actually sitting there waiting  
7 for telephone calls.   It was a problem of the equipment.

8           Now, we still however need to revamp the equipment  
9 because the 800 number has been so successful that we're getting  
10 many, many more telephone calls than we had originally  
11 anticipated.   So in the budget that is before the Legislature  
12 now, there again is an item to improve the telephone equipment.  
13 It's a ballooning process.

14          SENATOR PETRIS:   Do you have an estimate of time on when  
15 all this will be done?   I guess you have to rely on the  
16 technologists.

17          MS. GILLESPIE:   Actually there's a lot of excellent  
18 technology in the area.   It's been growing rapidly.

19          SENATOR PETRIS:   You need more money too?

20          MS. GILLESPIE:   Yes, we do.   That's an item there also.

21          SENATOR PETRIS:   Can we talk to the Governor on your  
22 behalf?

23          MS. GILLESPIE:   He has been nice to us.

24          SENATOR PETRIS:   I'm sure he's swamped right now with  
25 requests to use up the extra.

26          MS. GILLESPIE:   Ah, but you see, we're lucky.   We don't  
27 have to take out of General Fund.   We have our special fund, so  
28 we are not -- we don't have difficulties.



1           SENATOR PETRIS: Let me just go into one other area then  
2 I'll withdraw for a while.

3           Insolvencies.

4           MS. GILLESPIE: Yes.

5           SENATOR PETRIS: There's been a lot of publicity about  
6 the Mission Insurance Group, two plus billion dollars. Is that  
7 what it amounted to?

8           MS. GILLESPIE: Not that I'm aware of, no. The last  
9 report, and they're getting very hard right now because of the  
10 fact that they're all dispersed to the various state guaranty  
11 associations, the last was more in the area of 600 million  
12 without loss adjustment expense, without the legal fees in there.

13           I don't see any number as large as the one that you have  
14 just mentioned.

15           SENATOR PETRIS: The information reported by our staff  
16 says it involves an estimate in excess of 2½ billion for the  
17 entire group.

18           MS. GILLESPIE: I cannot say that that is an actual  
19 number, no. But it's a very large insolvency.

20           SENATOR PETRIS: When that happens, when the company  
21 becomes insolvent, your department has jurisdiction immediately  
22 to do certain things regardless of what's going on with  
23 bankruptcy court or anything else. Is that right?

24           MS. GILLESPIE: Correct.

25           SENATOR PETRIS: What do you do? Do you appoint --

26           MS. GILLESPIE: Insurance is its own.  
27  
28







1           SENATOR PETRIS: Do you appoint a trustee to step in and  
2 operate that and regulate the activities of that person who is  
3 responsible to you as Commissioner?

4           MS. GILLESPIE: The Insurance Commissioner is the  
5 liquidator in the statute.

6           With regards to the Mission, I did something very  
7 different from what has traditionally been done. I appointed a  
8 full-time liquidator because of the size of the insolvency, the  
9 fact that it's 50 states, and an enormous number of reinsurance  
10 that we need to recover back to us so that it does not pass  
11 through to the policy holders. And that, however, is an unusual  
12 step.

13           Most times, most liquidations are not handled with a  
14 full-time liquidator such as in the Mission.

15           SENATOR PETRIS: How is it handled? Through your office  
16 somewhere?

17           MS. GILLESPIE: Yes, I personally pick the liquidator.

18           SENATOR PETRIS: This is so massive that you felt it had  
19 to have a full-time --

20           MS. GILLESPIE: A full-time liquidator.

21           SENATOR PETRIS: Is that somebody in your shop or an --

22           MS. GILLESPIE: No, no. I went nationally. I was  
23 looking for a retired executive. I was hoping for a chief  
24 executive officer of an insurance company because the thing is so  
25 massive. And we have, according to some estimates, in excess of  
26 \$400 million of reinsurance that we want to recover. So I went  
27 nationally and I talked to many retired executives all over the  
28



1 nation. I found one person who was retired and who was willing  
2 to take this on. I did it myself.

3 SENATOR PETRIS: How do you pay him? Do you offer him a  
4 commission on what they recover for you?

5 MS. GILLESPIE: No. What I gave him was what I felt was  
6 an equivalent salary for a person with a like responsibility in  
7 the private sector.

8 I did not have many takers. The only other person who  
9 agreed to talk to me on the subject wanted more than the current  
10 man, and I went to the court to get approval for his  
11 compensation.

12 SENATOR PETRIS: Which court, bankruptcy?

13 MS. GILLESPIE: No, our court in California. Judge  
14 Torres in Los Angeles.

15 SENATOR PETRIS: You're operating under our statute that  
16 gives you the power to be the liquidator?

17 MS. GILLESPIE: Yes.

18 SENATOR PETRIS: And you're competing with all the other  
19 states, aren't you? If they do business in all 50 states, then  
20 we have to compete with them to get our fair share back.

21 MS. GILLESPIE: Oh, absolutely. But the problem too is  
22 that we have half the liabilities, Senator. Half of them.  
23 They're in California. So we are very much the largest state in  
24 interest.

25 SENATOR PETRIS: Were there any signals before the  
26 crisis came for that group? I understand there were some illegal  
27 transactions on their part, shifting funds from one place to  
28 another illegally and a whole series of things.



1           Weren't there any vibrations that came to your office  
2 that could have alerted your people to act on it in advance?

3           MS. GILLESPIE: The Mission was put into rehabilitation  
4 by the State under my predecessor in October, 1985. Looking back  
5 into the examinations and the financial reports and everything  
6 else that happened in the period, say, between 1982 and 1985,  
7 when the liquidation happened, I would say that everything  
8 happened very rapidly. There was a very sophisticated investor,  
9 Mr. Carl Lidner, who is one of the very, very premier investors  
10 in this country who actually put down a great deal of money for  
11 the Mission in 1984, just a few months before it was taken over  
12 by the State. It happened very rapidly.

13           The funds that you're talking about and the shifts  
14 occurred with the approval of my predecessor. He was trying to  
15 find ways to rehabilitate the company so that it would not go  
16 under because it's so large, and because at the time we were very  
17 much afraid that it would have a domino effect and bring other  
18 companies down. Those transactions we are examining, and if  
19 there is any need to go to the Attorney General or do anything  
20 else, get our money back, we will do.

21           As a matter of fact, in some of these cases the company  
22 that was involved in the shift has offered to put the egg back in  
23 the shell. At least at this point we feel that it would not be  
24 to the best interests of the policy holders to have that happen,  
25 but it does not mean also that we have finished our investigation  
26 completely into all of this affair.

27           It's a very tough one.  
28







1           SENATOR PETRIS: I can see that from the magnitude of  
2 it.

3           I understand you have a monitor list, a watchdog list of  
4 companies that do send signals --

5           MS. GILLESPIE: Yes.

6           SENATOR PETRIS: -- voluntarily or involuntarily that  
7 you pick up. There are a couple hundred companies on it right  
8 now.

9           MS. GILLESPIE: Yes.

10          SENATOR PETRIS: Is there any need for assistance to you  
11 in that area to anticipate problems? Are you sufficiently  
12 staffed and funded to do the job adequately?

13          MS. GILLESPIE: We have grown --

14          SENATOR PETRIS: Do you need help?

15          MS. GILLESPIE: We'll be asking for even more help in  
16 that area as each budget comes up. We do need to strengthen our  
17 staff considerably.

18          SENATOR PETRIS: Was it strengthened last year --

19          MS. GILLESPIE: Yes.

20          SENATOR PETRIS: -- over the previous year?

21          MS. GILLESPIE: Yes, it's been strengthening every year.  
22 We started out, I thin, 380 people in the Department of  
23 Insurance, and there's now, I think, currently 460, and with the  
24 current budget even more. So every year we have been adding on.

25          We are not --

26          CHAIRMAN ROBERTI: I'm going to stop right there so we  
27 can change tape. Of course, that's the euphemism for a recess  
28 for ten minutes.



(Thereupon a brief recess was taken.)

CHAIRMAN ROBERTI: The meeting will come to order.

Senator Petris, you were asking a question.

SENATOR PETRIS: Yes, I had indicated I would reserve questions on other subjects because there are witnesses, I think, that want to make an appearance, if I may, Mr. Chairman.

CHAIRMAN ROBERTI: Very good.

I have two questions myself, and unfortunately I wasn't here for all the questioning.

Currently the insurance companies are exempted from antitrust legislation. There have been some proposals to remove that exemption.

What's the position of the Department?

MS. GILLESPIE: It goes back to the same question that Senator Petris was asking. And what I mentioned is that although I would have no objections to seeing something like that brought about, I do want to make sure that they would still be able to pool lost costs. Otherwise, we would lose the small players. It's very important for us to be able to have that information available.

My own opinion is that rather than -- and I'm afraid I really don't understand antitrust very well. It's not something that I have much experience with. But the real problem that we're after is this advisory rates permission that is in the law now. And in my opinion, to go to where we need to go, that is what we need to change specifically. That I would really espouse.



1 CHAIRMAN ROBERTI: Say again? What is this?

2 MS. GILLESPIE: Okay. What that is is, right now  
3 insurance companies can follow -- they can get together,  
4 basically, and follow an advisory rate that is set by the  
5 Insurance Services Office which is their organization.

6 The problem with that rate, and here we're talking only  
7 property casualty, the problem with that rate is that it does not  
8 take into account investment income. On top of that, it has five  
9 points of profit, and in addition it has a not very competitive  
10 expense loading.

11 And what we need to do, in my opinion, and what we are  
12 going to be pursuing administratively, although I don't think we  
13 have the power to do it administratively unless they acquiesce,  
14 is to tell them, tell the Insurance Services Office that all they  
15 can do is, they can promulgate the lost costs. That is very  
16 important for us to have. We need that. They need that in order  
17 to do their business right.

18 But then, that we don't want them to load those lost  
19 costs with investment income, with expense provisions, and with  
20 profit. So that each of the companies can then make its own  
21 calculations on these other areas which they know they have  
22 because they're at their disposal.

23 CHAIRMAN ROBERTI: Also there've been wide fluctuations  
24 of the rates.

25 MS. GILLESPIE: Yes.

26 CHAIRMAN ROBERTI: What's your program to deal with  
27 that?  
28





1 MS. GILLESPIE: What we have been doing in that area  
2 since the end of the year 1986 is, we have been asking companies  
3 to notify the Department of Insurance when they intend to raise  
4 rates by 25 percent or more. They have been doing this, and  
5 depending on whether or not those rate increases are justified or  
6 not, we have been asking them either not to adopt them or we have  
7 been telling them that they can go ahead and adopt them. This  
8 program has been in effect administratively since the end of  
9 1986.

10 A problem that we have, Senator, is also the down part  
11 of the cycle. We have also had a lot of insolvencies in the  
12 recent couple of years in California, nationally but California,  
13 because of our size, we always seem to get more than our share it  
14 seems. And we are also trying to come to grips with that part.

15 As you say, the rates go up and down in the commercial  
16 area. We are setting up a monitoring type mechanism in the  
17 Department with the help of some of the bills that were passed  
18 last year, the Speaker's bill for instance. And we are  
19 accumulating information.

20 I think that what we are going to come to is also to a  
21 need for legislation in terms of what action can be taken by the  
22 Department if we see companies going down in a way that is  
23 imprudent. Right now our only authority is on the basis of  
24 insolvency.

25 CHAIRMAN ROBERTI: I'll give you my own experience. We  
26 passed legislation a couple years ago mandating earthquake --  
27 making earthquake insurance separate and severable, plus saying  
28 it had to be provided.



1           So I investigated to see what companies offered  
2 earthquake insurance, and I found one company that offered it for  
3 a year for \$800, which struck me as a little bit high, but maybe  
4 I should buy it because \$800 is worth the security, and even  
5 though the deductible I assume is something like 20 percent, so I  
6 guess the house has to cave in anyway before I could get  
7 anything. But \$800, I paid it for one year.

8           Next year my premium came without any notice and the  
9 same premium was \$6,000.

10          MS. GILLESPIE: Wow.

11          CHAIRMAN ROBERTI: Now --

12          MS. GILLESPIE: You should have told us about that.

13          CHAIRMAN ROBERTI: I didn't buy the policy because at  
14 that point I figured I'd go uncovered as most people in  
15 California are. And I should have told you about it.

16          But the fact of the matter is, they're doing this.

17          MS. GILLESPIE: Earthquake --

18          CHAIRMAN ROBERTI: That was earthquake plus the normal  
19 homeowner's, so the first one was like \$2800, and \$800 was the  
20 normal, but 6,000 I think included, say, \$2,000 normal  
21 homeowner's, so it was an increase to maybe \$4,000. But still  
22 that is --

23          MS. GILLESPIE: That is basically an invitation not to  
24 buy.

25          CHAIRMAN ROBERTI: It's an invitation not to buy, yes,  
26 when the law says they have to make it available.  
27  
28





1 Now, if they have to make it available, they shouldn't  
2 raise the rates so high that they're sending out invitations not  
3 to buy because I don't think they're complying with the law.

4 And now that I've brought this up, I'll show you the  
5 company involved without getting into that in public. But the  
6 fact of the matter is, I don't think this is a rare case.

7 MS. GILLESPIE: Earthquake is a very particular problem,  
8 and we're very well aware of it. We tried last year that bill  
9 that Senator Robbins carried for us to pool earthquake. I don't  
10 know if you remember it, to put it in the assigned risk plan.

11 Earthquake is a very significant problem. And what I'm  
12 hearing from the foreigners like Lloyd is that they don't want to  
13 participate in the California earthquake market.

14 CHAIRMAN ROBERTI: Well whatever, when the law says they  
15 have to make it available, then I think they should be, the  
16 companies, through the monitoring of the Department, should be  
17 straight forward and say, "Hey, actuarially it's impossible."  
18 And then we have a major debate to see if they're right or to see  
19 if they're wrong, but air the issue in public. Maybe they're  
20 right, but to arbitrarily do this on their own, which seems to  
21 contravene what the law is, really just isn't the way.

22 MS. GILLESPIE: Senator, we have a lot of problems with  
23 the way that that law is being implemented. I think everybody  
24 put it on the books with the best of intentions, and it's not  
25 working. I agree with you.

26 CHAIRMAN ROBERTI: So you monitor over 25 percent.

27 MS. GILLESPIE: Yes, we do.  
28



1 CHAIRMAN ROBERTI: For some types of insurance,  
2 especially if it's professional insurance, that may be a little  
3 bit high.

4 MS. GILLESPIE: Excuse me, this is commercial only.  
5 That's the one that goes up and down.

6 CHAIRMAN ROBERTI: I understand that.

7 MS. GILLESPIE: The others just go up.

8 CHAIRMAN ROBERTI: That's right, but these fluctuations,  
9 I know people who have professional liability insurance or  
10 business insurance, product liability insurance.

11 MS. GILLESPIE: Yes, and there are some cases, in some  
12 of these professional areas where they cannot even find it. We  
13 just had a hearing for architects and engineers, and some other  
14 types of professionals. And particularly architects and  
15 engineers are having a very difficult time.

16 CHAIRMAN ROBERTI: Some suggestions have been made that  
17 insurance companies should only be able to use data as far as  
18 actuarial data in setting of premiums rather than their profits  
19 and losses on other investments.

20 MS. GILLESPIE: Well, on the other hand, we do profit.  
21 Consumers do profit by the use of investment income.

22 CHAIRMAN ROBERTI: That's true, but it also causes the  
23 fluctuations. I think our recent experience is that early on,  
24 because of the investment income, it kept the margin of insurance  
25 low. When because of high interest rates, or whatever, the  
26 profits became less, then the differential was made up by the  
27 premiums.  
28



1 country since 1964. I cannot remember ever the kind of interest  
2 rates that we had back in the early '80s.

3 So what brought about those dislocations, we also I  
4 don't think can consider is a fairly routine cycle in our  
5 economy, which doesn't mean that we don't need to address it.

6 CHAIRMAN ROBERTI: Let's see, we have questions or  
7 observations or positions from people in the audience, so I'll  
8 ask for witnesses who are either here -- first, does anybody want  
9 to testify in support?

10 Does anybody want to testify either in opposition or in  
11 concern? You can take your choice, whatever you want.

12 MS. GILLESPIE: Should I stay here?

13 CHAIRMAN ROBERTI: Yes, you can stay.

14 Please come on up, the gentleman.

15 MR. ZELMAN: My name is Walter Zelman. I'm the  
16 Executive Director with California Common Cause and I would put  
17 my testimony in the category of concern rather than opposition.

18 Senator Roberti, you raised two questions regarding the  
19 antitrust legislation and the legislation that might deal with  
20 some kind of moderation of the fluctuation of the rates of  
21 insurance.

22 The consumer groups that are going to testify are  
23 aggressively supporting two pieces of legislation that address  
24 those questions. We're disappointed that the Office of Insurance  
25 does not have positions on those bills. In fact, we expect  
26 gubernatorial opposition, if we don't already have it, to those  
27 bills.  
28





1 MS. GILLESPIE: Right.

2 CHAIRMAN ROBERTI: Fine, we could argue that the policy  
3 holder got the benefit early on, now they're paying the price.  
4 That's only partially the case. No one can adjust to massive  
5 fluctuations.

6 So the issue isn't to control the fixing of the rate on  
7 actuarial consideration only as the insurance companies are  
8 unduly profiting from this. Maybe they are. I think they're  
9 getting a little bit. Maybe they aren't.

10 But the problem is, we have to do something to control  
11 these gyrations that cause the average person not to be able to  
12 plan. And I think that one major reason is that insurance  
13 companies fix their rates on outside investments, and therefore  
14 the policy holders are not only stuck with the actuarial problem,  
15 but they've got to somehow figure out what in the world profit  
16 insurance companies are making on land they hold in Florida, or  
17 South Carolina, or somewhere else.

18 I certainly think that's something that I hope you would  
19 investigate to some extent.

20 MS. GILLESPIE: We are. And you will be hearing from  
21 us.

22 My own fear is that we truly do not want to stymie the  
23 use of the investment income and just bring it about to the point  
24 where it's not unreasonable.

25 The other thing that we have to remember in all of this  
26 is that what we faced back in '85 and '86 was the result of  
27 unprecedented high interest rates. You know, I have been in this  
28



1 I'm here to express concerns about one aspect of the  
2 Department of Insurance activities over the last year or two. It  
3 may not be the most important aspect of those activities, but  
4 it's one that I think is symbolic and indicative of the ongoing  
5 difficulty consumer and public interest groups have had in  
6 dealing with the Department of Insurance.

7 In the early part of 1985, Common Cause was the  
8 proponent, along with some other groups, of legislation authored  
9 by Maxine Waters to create a consumer advisory panel. This was  
10 really the first beginnings of consumer input into the insurance  
11 area. We developed legislation that would do nothing more than  
12 create an insurance consumer advisory panel inside the Department  
13 of Insurance. It was advisory only. It had no real money. It  
14 had no real power. Its purpose was to assist the Commissioner  
15 and give the Commissioner consumer input.

16 We were met with massive opposition on the part of the  
17 insurance industry but were nevertheless able to get the bill out  
18 of the Assembly and to the Senate, where Senator Robbins with our  
19 approval cut an old fashioned political deal, and the  
20 Commissioner then, Mr. Bunner, agreed to appoint this panel on  
21 his own authority without having to go through the rest of the  
22 legislative process.

23 We all expected at the time that the panel that would be  
24 formed, both in substance and in operation, would follow the  
25 lines of the legislation, AB 1355, that we had developed.  
26 Unfortunately, under the previous Commissioner and under the  
27 present Commissioner, we fear that that has not been the case.  
28





1 The panel members that were appointed were very heavily weighted,  
2 far too heavily weighted in our view, towards representatives of  
3 the insurance industry. There were no representatives of  
4 consumer groups originally placed on this panel. Not Consumers  
5 Union, not Common Cause, not the Center for Public Interest Law,  
6 not the author, not any of the chairpersons of the Senate or  
7 Assembly Insurance Committees were asked to make recommendations  
8 for names to go on this panel.

9 When the panel first met in violation of the legislative  
10 direction, it met in closed session, and we had to physically  
11 disrupt the meeting in order to make the point that this should  
12 be an open meeting.

13 The Department has, at that time and since, continued to  
14 at least to some extent resist the election of officers as the  
15 legislation suggested. Appointed the chair rather than allowing  
16 the panel to select its own chair, and since that time in the  
17 last few months, the Department has cancelled the last two  
18 meetings of the council, and I've just learned has cancelled the  
19 next meeting of the council.

20 So, it's been a long way in our view, and somebody from  
21 the panel will testify. It's been a long way from a really  
22 adequate beginning in terms of a mechanism that will provide  
23 adequate consume input to the Department of Insurance, and we're  
24 very disappointed in that.

25 I want to call your attention to a memo that we received  
26 in 1986 that came out of a lawsuit that had to do with our  
27 efforts to force this panel to have open meetings, which it now  
28



1 does. This memo was very disturbing to us at the time and  
2 remains disturbing to us. It was written by the present  
3 Commissioner, Ms. Roxani Gillespie, and the memo was written to  
4 Mr. John Geoghegan, Secretary of Business, Transportation and  
5 Housing Agency.

6 And in it, it is a memo about the appointment of the  
7 panel and about the panel about to be appointed. And there are a  
8 number of points about the memo. I have a few copies of it which  
9 I can distribute to Members of the panel.

10 There are a number of things here. It refers to the  
11 original bill, AB 1355, as extreme. It talks about some of the  
12 merits, some of the elements of the bill as being unattractive to  
13 the Department of Insurance and to the industry. It suggested  
14 some of the advocates of the bill, including Ms. Waters, would  
15 probably prefer that more liberal or more extreme viewpoints be  
16 placed on the panel. And most importantly, and most  
17 disturbingly, it lists at one point, on Page 2 of the memo, after  
18 it lists the proposed members of the commission, it states that:

19 "These individuals have been cleared  
20 with several members of the industry and  
21 some interested legislators. Resumes  
22 will follow."

23 So, we have basically Ms. Gillespie writing a memo to  
24 the head of the Secretary, Business, Transportation and Housing,  
25 saying that we ought to appoint this panel lest this legislation  
26 go through, in effect, which would be more stringent. Here are  
27 the members that we've run by the industry to make sure they're  
28 okay and they've been approved.



1 That was hardly, in our view, the following of the  
2 legislative intent in terms of the setting up of the Consumer  
3 Advisory Panel.

4 I should say in closing our personal relations with Ms.  
5 Gillespie have been fine. I have had a number of conversations  
6 with her. She responds to proposals.

7 But the Department of Insurance is a long way from an  
8 agency that is genuinely open to consumer input and genuinely  
9 responsive to it. So we still have very grave concerns along  
10 those lines.

11 CHAIRMAN ROBERTI: Senator Petris.

12 SENATOR PETRIS: Your organization has been kind of a  
13 monitor for a lot of agencies over the years.

14 Is it your impression that things, although they're not  
15 where they should be, have improved in the last couple of years?

16 MR. ZELMAN: You know at lunch --

17 SENATOR PETRIS: Or not?

18 MR. ZELMAN: At lunch I sort of made the comment, "Well,  
19 maybe we should note that things have improved. There's some  
20 studies that have come out about auto insurance." I know the Los  
21 Angeles Times published a full page of all the auto rates you  
22 could buy. And there have been some changes in that regard.

23 I would overall consider them to be very, very modest in  
24 scope, and I think it's fair to say that for the first time in  
25 the last two or three years there have been some groups, ICAN  
26 particularly, Consumers Union particularly, Common Cause to a  
27 lesser extent, that have brought pressure on the Department of  
28





1 Insurance to make these kinds of changes, either working through  
2 you, through Legislators, or directly through the Department or  
3 through the media. And I think some of the changes may have been  
4 in response to our efforts, but I would stay say those changes  
5 have been pretty minimal.

6 There have been some, yes.

7 Thank you very much.

8 CHAIRMAN ROBERTI: Thank you, Mr. Zelman.

9 MS. GILLESPIE: Mr. Chairman, may I just make a  
10 statement?

11 CHAIRMAN ROBERTI: Yes.

12 MS. GILLESPIE: I was not provided with a copy of the  
13 memo, but I did see that. Although my name was stamped at the  
14 bottom of it, it was prepared by someone else in the Department.  
15 I believe I'm generally aware of its contents, but it is not my  
16 memo.

17 MR. ZELMAN: I don't know what to say. It's signed by  
18 you.

19 MS. GILLESPIE: It is a stamp, and it says, "Prepared  
20 By" and there is a name.

21 MR. ZELMAN: It says, "Approved By" on Page 3.

22 MS. GILLESPIE: And on Page 1 it says, "Prepared By",  
23 and the person from whom this is supposed to come from is Bruce  
24 Bunner.

25 CHAIRMAN ROBERTI: My new policy is to read everything  
26 that comes across my desk. The problem is, if you saw how  
27 quickly I read it, maybe it's best to say I never even saw it  
28



1 because it's impossible, impossible, to monitor every piece of  
2 paper, even the ones you sign. I appreciate that.

3 MS. CARDENAS: I'm Julie Cardenas, and I work for the  
4 Center for Public Interest Law.

5 I have monitored the Department of Insurance activities  
6 since August of 1985 and the panel since its creation in May of  
7 1986.

8 I was appointed to the Consumer Advisory Panel in  
9 January of 1987, and I was elected co-chair at the March 5th  
10 meeting.

11 I'm here to present some of the concerns of the panel  
12 members. Basically our first -- the next three meetings that we  
13 were supposed to have beginning April, May and June have been  
14 cancelled. And they were not cancelled by myself or the  
15 co-chair, and there was no one who was given any input as to why  
16 it was cancelled or whether we would still like to have a  
17 meeting.

18 And as a result, we haven't been able to make our  
19 recommendations. What was scheduled to be on the agenda for the  
20 April meeting was the Department's report on the panel's  
21 recommendations that the Department had implemented. To date we  
22 don't have any proof that they are doing what we are suggesting.  
23 We just know that it kind of goes in and we never hear about it.  
24 And we were asking to please have some type of report, and ever  
25 since we've made that request, we have not had a meeting.

26 SENATOR CRAVEN: May I interrupt, Mr. Chairman?

27 CHAIRMAN ROBERTI: Yes, Senator Craven.  
28





1           SENATOR CRAVEN: First of all, would you tell me please  
2 who you represent? I didn't hear you.

3           MS. CARDENAS: I'm with the Center for Public Interest  
4 Law, but I'm also a co-chair --

5           SENATOR CRAVEN: The Senate Public --

6           CHAIRMAN ROBERTI: No, Center for Public Interest.

7           SENATOR CRAVEN: Oh, Center, C-e-n-t-e-r.

8           MS. CARDENAS: That's a group down in San Diego that  
9 monitors 60 state agencies.

10          SENATOR CRAVEN: Oh, well you have a couple of real  
11 neophytes here because I don't think either Senator Ellis, who is  
12 a San Diegan for real, and myself, who is sort of a peripheral  
13 San Diegan, know of your organization.

14          MS. CARDENAS: We're affiliated with the University of  
15 San Diego.

16          SENATOR CRAVEN: You're one of Bob Felmuth's tigers,  
17 huh?

18          MS. CARDENAS: Yes.

19          SENATOR CRAVEN: Well, now I understand a little better.  
20 May I just ask, the group on which you serve and you're  
21 the chairwoman, or have been, is that an advisory group?

22          MS. CARDENAS: Yes, it was the one that was created as a  
23 compromise from 1355 and the Senate.

24          SENATOR CRAVEN: So what they do basically is express  
25 their best opinion as to how things may be rectified, changed, or  
26 whatever, to the Commissioner; is that right?

27          MS. CARDENAS: Right.  
28



1           SENATOR CRAVEN: And that's basically their job; right?

2           MS. CARDENAS: Right. They're somewhat -- we all  
3 somewhat confused as to what our role is at this point because  
4 our meetings have been cancelled, and we have had several  
5 subcommittee meetings and reports to the Commissioner. But we're  
6 up in the air as to what was going on. And at our June meeting,  
7 we had planned to discuss the role of the members on the panel,  
8 and who could call meetings, who could cancel, to try to get a  
9 structure because right now there really is no structure.

10          SENATOR CRAVEN: The reason I bring that up is that you  
11 have, if you are in fact an advisory commission or group, you've  
12 obviously served on other advisory groups in your career thus  
13 far, have you not?

14          MS. CARDENAS: No, this is my first advisory.

15          SENATOR CRAVEN: Oh, is it? Well, welcome to the club.

16          My experience with them is that they serve a very  
17 worthwhile purpose, but they never are in a position where they  
18 stand in the middle of the ring, with whip in hand, and have all  
19 the tigers jump up on their stools at the same time, because  
20 those tigers just don't have any responsibility to do that.

21          Do you understand my metaphor?

22          MS. CARDENAS: Right. We realize that, but we also  
23 realize that we were created to be an input of what the public  
24 wanted, and that was what we were created for, to advise the  
25 Commissioner and help her understand what the public needs and  
26 what the public wants.

27          SENATOR CRAVEN: Yes.  
28



1 MS. CARDENAS: And at this point we don't feel that we  
2 are being listened to, period, so that the public doesn't have an  
3 input through this panel.

4 SENATOR CRAVEN: Well, you file, I presume, minutes of  
5 your meeting with the Commissioner; do you not?

6 MS. CARDENAS: That's one of the problems. No minutes  
7 are taken right now, and according to the budget, there was a  
8 budget proposal, a budget hearing. As of January, 1987 [sic] we  
9 will have someone to take minutes.

10 SENATOR CRAVEN: How could you get information which you  
11 have adjudged to be appropriate to the powers that be if you  
12 don't have anything written?

13 MS. CARDENAS: We make written documents and send them  
14 off, written proposals ourselves.

15 SENATOR CRAVEN: So you do reports then, we'll say.

16 MS. CARDENAS: Right.

17 SENATOR CRAVEN: And you send the reports in.

18 MS. CARDENAS: Right.

19 SENATOR CRAVEN: So they are made aware through the  
20 reporting process.

21 MS. CARDENAS: Right.

22 SENATOR CRAVEN: That's fine. Thank you.

23 MS. CARDENAS: Okay, basically we had reports on senior  
24 citizen and the Medigap. We had recommendations that we wanted  
25 to give to the Commissioner which would be appropriate at this  
26 time, but because we aren't meeting, we're not able to give those  
27 recommendations. We have recommendations on consumer projects  
28 and the internal affairs.





1           We were just somewhat frustrated at having worked quite  
2 hard on these projects and not being heard.

3           A further thing is that I talked with Everett Brookhart,  
4 he's the Chief of Consumer Affairs, yesterday. And he wanted to  
5 assure me that Commissioner Roxani had not abandoned the panel,  
6 that the work on the subcommittee should continue, but that we  
7 should not meet in June because the Department could not be  
8 there, and that we should not meet without the Department.

9           So basically we feel like our hands are tied. We're  
10 supposed to work, but we're not supposed to work. And this is  
11 causing us a lot of frustration.

12           And I was told by Everett Brookhart that Commissioner  
13 Roxani wants to wait until the Legislature acts before we meet  
14 again, and she wants to create her own panel and one that follows  
15 her own goals, and that basically she won't do anything until the  
16 Legislature acts. And there's a couple bills that she's  
17 interested in.

18           What we're asking for is that the Legislature  
19 established the Advisory Panel, let us know what our role is as  
20 an Advisory Panel, because we're not sure at this point. And we  
21 would also like to assure that the Commissioner works in good  
22 faith with the Advisory Panel, and that the Advisory Panel really  
23 does represent the public and not the industry.

24           Thank you.

25           CHAIRMAN ROBERTI: Thank you very much.

26           Senator Ellis.  
27  
28



1           SENATOR ELLIS: Who was the founder of your  
2 organization?

3           MS. CARDENAS: Robert Felmuth.

4           SENATOR ELLIS: Of Cal --

5           MS. CARDENAS: The Center for Public --

6           SENATOR CRAVEN: USD, Jimmy.

7           MS. CARDENAS: University of San Diego, School of Law.

8           SENATOR ELLIS: When was that founded?

9           MS. CARDENAS: The University or the --

10          SENATOR ELLIS: No, the --

11          MS. CARDENAS: The program's been in existence for about  
12 six years.

13          SENATOR CRAVEN: Bob Felmuth has been involved with this  
14 type of activity, I'd say, consumer interest type activity for --  
15 I remember him when I was a supervisor, and that's a long time  
16 ago.

17          MS. CARDENAS: Yes, he's been involved, I would say, for  
18 about 20-30 years.

19          SENATOR PETRIS: Your name?

20          MS. CARDENAS: Julie Cardenas.

21          SENATOR PETRIS: That's C-a-r-d-e--

22          MS. CARDENAS: N-a-s.

23          SENATOR PETRIS: Thank you.

24          CHAIRMAN ROBERTI: Before we go to the next witness, I  
25 think that this hearing is going to go on for a little bit  
26 longer, and then we have about 17 more rule waivers, which is  
27 going to move us, I would suspect, past 5:00 o'clock.  
28





1           Would there be any desire on the part of the Committee  
2 that we reconvene for the Executive portion of the session after  
3 business tomorrow?

4           SENATOR ELLIS: When will business end tomorrow?

5           CHAIRMAN ROBERTI: Well, we're going to be in all day  
6 tomorrow. It doesn't have to be after; it could be during.

7           (Thereupon a discussion was held  
8 involving other legislative matters.)

9           CHAIRMAN ROBERTI: Next witness.

10          MS. BELL: Yes, Senators, I'm Judith Bell. I'm Director  
11 of Special Projects for the Consumers Union. We're the publisher  
12 of Consumer Reports magazine.

13          I want to spend a little bit of time addressing, we have  
14 some concerns in this area, in addressing the role that the  
15 Department of Insurance has taken as the regulator.

16          The Department, in particular on the excessive rate  
17 issue, takes the role of an insider as opposed to a policer or  
18 regulator. They talk with the companies; they monitor only the  
19 commercial liability increases and then they deal with it on an  
20 inside basis. The Department has not put any penalties on  
21 companies since 1977. In essence they are choosing to try and  
22 deal with the industry in the backrooms without coming out and  
23 putting in some deterrent measures by putting in some penalties.

24          In fact, this 25 percent that's been discussed is  
25 strictly for commercial liability and is not on a prior approval  
26 basis. In other words, the companies go ahead and charge the  
27 increase, and then it's up to the Department to both review it  
28 and/or roll it back.



1           For personal lines, or for other types of policies, it's  
2 up to the Department to find that information out in their market  
3 conduct exams; pretty much that's what they use.

4           In '83 and '84, just to give you some background on  
5 this, there were 20 of these exams planned and 2 were completed.  
6 In '84 and '85, 24 were planned and 5 were completed. In '85 and  
7 '86, there were 9 completed. In '86 and '87, there are 12 to be  
8 completed, and while there are 36 planned for '87 and '88, it's  
9 unclear how the Department plans on completing those since that's  
10 far and above anything they've ever completed before.

11          To underline this point of the Department choosing not  
12 to be a policer, let me go back to what Senator Mello raised on  
13 the Medigap issue and on the cease and desist orders. The  
14 Department had issued cease and desist orders on several types of  
15 advertising in the Medigap area. Let me be specific. These are  
16 orders that are issued after the advertising has been dropped in  
17 the state, and there are several instances that we both know of  
18 and my understanding is the Department has been notified about in  
19 which these orders have been violated.

20          The Department has once again not issued any penalties  
21 in this area nor have they forbidden the sale of any of these  
22 policies. The State of Washington has done both and did it about  
23 a year ago. They both issued penalties in this area and forbid  
24 the sales. So there is a much more aggressive role that the  
25 Department could choose to take in their stance as regulator.

26          SENATOR CRAVEN: May I interrupt a moment to ask you,  
27 you used the term "after it has been dropped in the state."  
28





1 MS. BELL: In other words mailed. In other words, there  
2 are up to -- some of these mailings go out to a million people.

3 SENATOR CRAVEN: I see.

4 MS. BELL: And after the mailing has gone out, the  
5 Department then issues the cease and desist order. And that  
6 order is for the specific mailer. So that there are instances in  
7 which companies have changed the color of the paper and changed  
8 some lines and gone out and mailed again, and the Department is  
9 then in a position of having to go out and get a second cease and  
10 desist order.

11 So what we really believe is a more appropriate role is  
12 for the Department to be more aggressive, to in fact go out there  
13 and push for penalties so that companies understand that should  
14 they engage in these practices, they will in fact have to pay for  
15 it.

16 SENATOR CRAVEN: Would it be within the jurisdiction of  
17 the Commissioner to set penalties?

18 MS. BELL: The Commissioner does have those powers, yes.

19 SENATOR CRAVEN: To do that?

20 MS. BELL: Yes.

21 SENATOR CRAVEN: So really aggressiveness, as far as  
22 your philosophy is concerned, is one where the penalty is a very  
23 strict, stringent penalty. That's being properly aggressive?

24 MS. BELL: Well, it seems to me, Senator, that in a case  
25 like Medigap in which the Department and the public and the  
26 Congress and the Legislature has repeatedly found very large  
27 problems, I mean to the tune of \$3 billion being wasted  
28





1 nationally on unnecessary policies, that it makes sense for the  
2 Commissioner to be out there and exacting some penalties.

3 She has issued more than 24 cease and desist orders.  
4 That says that there's a big problem, and that there needs to be  
5 some deterrents. In fact, penalties are a great to deter  
6 companies from continuously issuing what are really deceptive  
7 mailers. She has, in fact, by issuing those cease and desist  
8 orders, has recognized the deceptiveness of those mailings.

9 The cease and desist order is really not that effective  
10 because it's after the material has been mailed. So what we need  
11 is something that says to the companies, "Okay, you violated the  
12 cease and desist orders. Here's a very large penalty." That's a  
13 signal to other companies.

14 That's a signal that says the State is going to be in  
15 there; the State is going to be in fact making sure the consumers  
16 are protected.

17 SENATOR CRAVEN: She cannot proceed with any fine or  
18 whatever prior to the mailing, can she?

19 MS. BELL: No, but once the cease and desist -- she can  
20 choose to go with a penalty as opposed to a cease and desist  
21 order and/or once that cease and desist order has been violated,  
22 she can go for a penalty.

23 SENATOR CRAVEN: But only after somebody has in effect  
24 heard; isn't that correct?

25 MS. BELL: Right. But what I'm suggesting is that the  
26 problem is so -- it is so much one that is both repeated and one  
27 that has become a part of the market place that issuing those  
28



1 penalties against a few players would in fact set up -- would  
2 deter other players, other companies, hopefully, from repeating  
3 that practice.

4 It's true she can only stop something once it's  
5 occurred, but that there are so many instances now where it has  
6 occurred, that it's clear that there needs to be something to  
7 stop it from repeating.

8 SENATOR CRAVEN: Yes, so what I interpret you to say is  
9 that she has done the right and appropriate thing, but she should  
10 go further.

11 MS. BELL: That's right. That it has not been  
12 aggressive enough, and that in fact it has not stopped the  
13 problem.

14 SENATOR CRAVEN: Thank you.

15 SENATOR MELLO: I have a question at this point on that  
16 same line of questioning.

17 CHAIRMAN ROBERTI: Senator Mello.

18 SENATOR MELLO: It's my understanding that some of these  
19 insurance companies that actions have been taken against on a  
20 cease and desist basis, they have found a loophole of writing a  
21 policy in another state but not selling the policy in California,  
22 but issuing a certificate of insurance.

23 Is that correct?

24 MS. BELL: That's under some of the group policies, and  
25 you're correct that there is some question as to what the  
26 regulatory powers are when a certificate has been issued as  
27 opposed to a policy.  
28





1           SENATOR MELLO: I just hope when you close, if you could  
2 touch on that, see what you're doing about it. Because I think  
3 if they're issuing a certificate in lieu of a policy, the same  
4 act is being accomplished through some subterfuge.

5           Thank you.

6           MS. BELL: I also want to make one other point on this  
7 Medigap issue here.

8           The Commissioner has indicated that she expects the  
9 guide to be printed within the next few weeks. I just want to  
10 point out that on November 20th, 1986, the Commissioner also said  
11 that it would be ready in a couple weeks, and we are hopeful that  
12 this time the guide will in fact appear in a few weeks and will,  
13 in fact, be one that is available to consumers across the state.

14          Let me spend just a moment talking about the earthquake  
15 issue that Senator Roberti brought up earlier. This is one that  
16 has repeatedly been a problem.

17          Last year we had a study done by the Center for  
18 Investigative Reporting that showed that the Chubb Insurance  
19 Company was automatically cancelling homeowner's insurance for  
20 customers who requested additional earthquake or earth movement  
21 insurance. The customers were told -- were not told that the  
22 requesting of this additional coverage would result in  
23 cancellations. That was last year.

24          On April 13th of this year, the Chronicle reported that  
25 the practice continues, so this is one that we have now seen  
26 repeated and, as far as I know, the Department has yet to make it  
27 clear either to Chubb or to consumers what the status is of what  
28 they should do about this additional coverage question.



1 CHAIRMAN ROBERTI: Let me stop you there.

2 What does the Department do or say on the problem?

3 MS. GILLESPIE: Ms. Bell should have read the whole  
4 article. The article actually starts with the Department of  
5 Insurance complaining about this practice and the fact that there  
6 is nothing they can do about it because basically what they do,  
7 and I don't remember whether the Chubb is one of them, they just  
8 choose not to sell a policy, period.

9 CHAIRMAN ROBERTI: Isn't there a provision in the law  
10 that requires that they have to make it available?

11 MS. GILLESPIE: If they sell you the homeowner's, but  
12 they may choose to sell you nothing at all.

13 CHAIRMAN ROBERTI: What do you do in the case of the  
14 situation that I brought out where --

15 MS. GILLESPIE: Where that is such a very excessive  
16 rate?

17 CHAIRMAN ROBERTI: Part of a homeowner's, but it was so  
18 excessive it wasn't even realistic.

19 MS. GILLESPIE: Well, that you should have reported to  
20 us.

21 CHAIRMAN ROBERTI: Fine, assuming --

22 MS. GILLESPIE: And I hope that you will do that.

23 CHAIRMAN ROBERTI: -- the consumer was other than I,  
24 what would you do in that case?

25 MS. GILLESPIE: Then what we would do --

26 CHAIRMAN ROBERTI: Assuming all my facts are correct.  
27  
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1 MS. GILLESPIE: Yes, then what we would try and find out  
2 is whether or not that is justified, or whether what they're  
3 trying to do basically is they're trying to make you not buy a  
4 policy at all, and they're just picking a number.

5 CHAIRMAN ROBERTI: Please continue. Senator Petris.

6 SENATOR PETRIS: Isn't that similar to a situation in  
7 North Carolina where the Governor declared war on the insurance  
8 companies who were doing highly selective sales of this kind, and  
9 the Governor said, "You can't do that. You've got to make this  
10 available to the public generally or you don't sell anything in  
11 this state."

12 And they said, "You impose that on us and we'll leave,"  
13 so they left, and then they came back.

14 I guess he had to have special legislation. I don't  
15 know what powers he had.

16 MS. GILLESPIE: Well, that's right, but what Brian  
17 Walker has just pointed out to me is that the law that we're  
18 talking about applies only to new policies and not to renewals in  
19 any event, so what we would be looking for is something a little  
20 different.

21 But what you're saying, Senator, is exactly right. When  
22 the companies find that in their opinion they cannot sustain the  
23 selling of a product either because there is a mandate that the  
24 price be too low in their opinion or whatever, they just retreat  
25 totally. They are not like a utility where we say, "You have to  
26 provide this community homeowner's policies."  
27  
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1           SENATOR PETRIS: Are you saying they'd pull out of the  
2 state or they just go from Customer A to Customer B?

3           MS. GILLESPIE: In earthquake they go to Customer B,  
4 because maybe they don't like the fact that this particular area,  
5 say, is on a fault, and they try and find somebody who lives on  
6 rocks or whatever.

7           SENATOR PETRIS: Isn't that a violation of the statute  
8 that we're talking about which for five or six years now has said  
9 you must provide information to the customer on homeowner's  
10 insurance of the availability of --

11          MS. GILLESPIE: Of earthquake.

12          SENATOR PETRIS: -- earthquake.

13          MS. GILLESPIE: Yes. Unfortunately that does not --

14          SENATOR PETRIS: Then when they do that, and then the  
15 customer says, "Yeah, I want some," they get cancelled.

16          Isn't that a violation of the statute?

17          MS. GILLESPIE: The statute says that when it's a new  
18 policy, it's a new homeowner's policy, you have to make the offer  
19 of earthquake. That's what the statute says.

20          So they did that when the law first went into effect.  
21 Then they did things like what happened to Senator Roberti. And  
22 I'm not saying all of them, but some. They yanked the prices  
23 very high, or they said, "Oh, if you want to buy earthquake, then  
24 I don't think I want to sell you anything at all." That's  
25 different.

26          I'm afraid that they have found ways around that law.  
27  
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1           SENATOR PETRIS: Which ever way you look at it, it's  
2 wrong it seems to me.

3           MS. GILLESPIE: You're right. No, it's not working.  
4 It's simply not working.

5           SENATOR PETRIS: What can we do? More legislation?

6           MS. GILLESPIE: With earthquake you have --

7           SENATOR PETRIS: Why don't we invite them to leave the  
8 state? We've got plenty of other insurers here, like North  
9 Carolina did.

10          MS. GILLESPIE: We feel that the best thing with  
11 earthquake is a pooling. That's what we tried to do with the  
12 Fair Plan.

13          SENATOR PETRIS: What is a company refuses to  
14 participate in a pool?

15          MS. GILLESPIE: In the Fair Plan?

16          SENATOR PETRIS: No, in --

17          MS. GILLESPIE: Well, that pool is the Fair Plan. Right  
18 now there is a Fair Plan, and everyone who writes property  
19 insurance in the state has participated.

20                If they want to give up their entire property line,  
21 that's a lot. That was our thinking.

22          SENATOR PETRIS: Not likely to do that.

23          MS. GILLESPIE: That was our feeling.

24          SENATOR PETRIS: Thank you.

25          MS. BELL: Let me just finish by saying that we are  
26 encouraged that the Commissioner has said what she did earlier  
27 about the antitrust bills, since the bill pending in the Assembly  
28





1 has virtually all of the requirements that she suggested and we  
2 look forward to working with her on that.

3 In closing, I just want to suggest that we are  
4 encouraged that the Department has begun to take a role. We are  
5 hopeful that it will be a more aggressive role to ensure that  
6 consumers are protected in the state.

7 Thank you.

8 CHAIRMAN ROBERTI: Thank you very much.

9 Are there any other witnesses?

10 MS. KALEMKIARIAN: Mr. Chairman, Members, my name is  
11 Sharon Kalemkiarian. I'm the Director of the Insurance for Child  
12 Care Project.

13 I appreciate your tolerance for an unintentional  
14 demonstration this morning of the importance of child care. He's  
15 not here because of an insurance problem but others.

16 I wanted to say just a few words about where we are with  
17 the child care problem, and what the Commissioner has done and  
18 still needs to do.

19 We have found her, I would say, congenial and certainly  
20 her staff in working with us; however, our approach has been  
21 decidedly different. We have found the Department's attitude to  
22 be pretty much "Let's wait and see what happens." And we've been  
23 waiting to see what would happen now for approximately 18 months,  
24 almost two years, because this problem began in June and July of  
25 1985.

26 If you review some of the materials that we presented  
27 you with, in July of '85, the crisis began; as of today we still  
28



1 have 60 percent of the home providers that are without coverage.  
2 Most of the centers are still paying increases averaging well  
3 above 25 percent with their 1987 bill.

4 In June of '86, the Commissioner did hold hearings. She  
5 issued a draft report of what she thought needed to be done, but  
6 there was not final report issued until the following fall, and  
7 we still have not seen any definite action except in one  
8 particular area. In that area the Commissioner did get two large  
9 homeowner companies, State Farm and Allstate, to issue a policy  
10 where you could cover your small day care on your homeowner's,  
11 but something has prevented other companies from participating,  
12 and we sort of need to know why because two companies is not  
13 really quite enough for those who need the homeowner policies.

14 In terms of other measures which were taken by her  
15 predecessor and which she inherited, that being the Calcare  
16 Program which some of you are probably familiar with, the market  
17 assistance plan, it has been in operation since October of '85.  
18 In that time it's written a total of about 150 policies. There's  
19 been a 65 percent rejection rate, and it took until spring of  
20 this year, again almost 18 months, before the Commissioner sat  
21 down with the Calcare Board and said, "What's going on here?  
22 Let's analyze what we need to do." That's a long time for people  
23 to be paying the increases and experiencing no help from the  
24 market place.

25 On top of that, the wait and see attitude has somewhat  
26 involved hoping that the market forces would come into play.  
27  
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1 I come from a small business family and all in favor of  
2 the market forces; however in this circumstance, we've seen, I  
3 think the Commissioner agrees with us, that child care needs some  
4 special treatment. There is simply a fear of insuring children.

5 And yet, we haven't seen the kind of special aggressive  
6 measures that are need to convince the companies that kids are  
7 not a walking disaster area, and that is pretty much the attitude  
8 that they have. To exhibit that, not only have few companies  
9 gotten into the homeowner's business, but in the commercial area,  
10 all the major companies who used to write, many of them are now  
11 out of the market. Those who participate in Calcare, none of  
12 them who used to, who wrote -- none of those who did not write  
13 when they joined Calcare are writing now. So we haven't  
14 encouraged any new companies.

15 And the new companies who are writing are mostly not  
16 regulated by the State of California. They're the so-called  
17 excess line who are not regulated.

18 So we have a problem there, and although we've found the  
19 Commissioner concerned about the problem, certainly accessible --  
20 I'm often surprised that I can get her on the phone and we talk  
21 about the problem -- we haven't seen as aggressive approach as is  
22 need. It's now been two years, and frankly, as recently as two  
23 weeks ago, talking with her staff, I was still hearing that we're  
24 waiting to see what the market's going to do.

25 The market is loosening very, very, very slowly, and the  
26 rates people are paying are 300 percent above what they paid 18  
27 months ago.  
28





1           On top of that, and then please, I'd appreciate your  
2 questions, we have had only one report from the Department of an  
3 investigation of any type of the companies that increased their  
4 rates so dramatically, and that was of a broker, of his records  
5 that were provided in a summary fashion. So, it was certainly  
6 not a formal investigation. And it seemed to us, over the recent  
7 months, that with increases continuing and no absolute data  
8 having been provided, we needed more investigation into whether  
9 these rates were really fair or not, and what could be done to  
10 make sure that child care was available.

11           We have, as you know, a growing need in this state.  
12 Senator Roberti and others have sponsored important legislation  
13 and programs to increase latchkey care, to increase preschool  
14 care, and yet we have programs closing still, documentation from  
15 the last six months particularly in the latchkey area, who cannot  
16 find adequate coverage at a reasonable price.

17           We believe the Department thinks something needs to be  
18 done about this, but we need a much more aggressive approach and  
19 one which can solve the problem in the near future instead of  
20 waiting for the next crisis to occur.

21           CHAIRMAN ROBERTI: Thank you very much.

22           Senator Petris.

23           SENATOR PETRIS: Did you ever get any data on why the  
24 industry pulled out of the child care center?

25           MS. KALEMKIARIAN: It's been very difficult, Senator  
26 Petris, as you've probably heard.  
27  
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1           The data which ISO provided, the Insurance Services  
2 Organization, did not show as big a problem as one would have  
3 expected given what the industry did.

4           Now, when we raised that issue, Commissioner actually  
5 agreed with us and the industry then said, "Oh, well, the ISO  
6 data isn't any good." That's all we had to go on, and that did  
7 not show the crisis to be as dramatic as their response did.

8           Informally, many of the company executives have told us  
9 that the real problem is not the actual losses. It's the fear of  
10 losses. So that the fear that they'll have to pay an abuse  
11 claim, the McMartin case, examples of dramatic but very  
12 infrequent potential claims are what are driving them away.

13           And we have not been able to sit down and really talk  
14 with them about that and figure out how we get around that  
15 problem.

16           SENATOR PETRIS: Have they paid out a lot of money in  
17 the McMartin case?

18           MS. KALEMKIARIAN: No, they haven't paid out anything.

19           SENATOR PETRIS: That's my understanding.

20           MS. KALEMKIARIAN: Yes, nothing. And in fact, as of a  
21 year ago, there had not been even a million dollar payment  
22 anywhere in the country on any child care policy.

23           SENATOR PETRIS: They're pulling out everywhere?

24           MS. KALEMKIARIAN: Yes, but California's the worse.

25           SENATOR PETRIS: Well maybe the Commissioner can  
26 enlighten us on that.  
27  
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1           SENATOR CRAVEN: I think there was a period of time,  
2 long before you were born, when I was a youngster, I don't think  
3 that there was any underwriting of children until the age of 6 or  
4 7, maybe. So there's been a sort of an aversion to that sort of  
5 thing.

6           And as you say, it isn't so much what it is as what they  
7 think it may be that's really spooking them.

8           MS. KALEMKIARIAN: And what's strange, Senator Craven,  
9 is that in fact what they're afraid of is abuse, let's state it.

10          SENATOR CRAVEN: Sure.

11          MS. KALEMKIARIAN: They're not afraid of the kid  
12 tripping, which is what 95 percent of the claims are. And my son  
13 now is falling every hour, so I can appreciate that.

14          They're afraid of the abuse claims, and yet almost all  
15 of the policies that are now being issued, especially by  
16 companies, the two or three who are new in the market, excluded  
17 coverage for abuse.

18          So on the one hand the provider [sic] is told, "We do  
19 not cover you for this," and they are told it repeatedly, and yet  
20 the companies are informally telling us that's the reason the  
21 rates have gone up.

22          So, we're a little confused about what we're supposed to  
23 do in that situation.

24          SENATOR CRAVEN: That's understandable.

25          MS. KALEMKIARIAN: We also recently, just actually from  
26 the Palo Alto area, I got a call yesterday from a director of a  
27 Montessori program who has a spotless record. He is opening two  
28



1 new centers with the help of a developer, he thought, an office  
2 development. It's an area that badly needs child care in Palo  
3 Alto. And he was told this week, after 7 months of work, that  
4 the developer would not let him open those centers because they  
5 were afraid of the liability.

6 So this is a really growing massive problem, and we're  
7 seeing the second tier. And what's very interesting is, of  
8 course, many of the insurance companies hold the mortgages on  
9 these developments, so we get into another level of difficulty.

10 CHAIRMAN ROBERTI: Points well made.

11 Any other questions?

12 SENATOR CRAVEN: I'd like to say I think your little  
13 boy's been very good.

14 MS. KALEMKIARIAN: Thank you, I think so too, actually.

15 CHAIRMAN ROBERTI: Any further observations?

16 MS. KALEMKIARIAN: Just one.

17 For the future, and I'll be speaking with the  
18 Commissioner about this, our proposal from the Insurance for  
19 Child Care Project has been for a special type of joint  
20 underwriting association for child care. That bill in the Senate  
21 is 1102 sponsored by Senator Seymour.

22 We're very concerned because Assemblyman Lancaster's  
23 bill has gained some momentum as the Department's bill and as the  
24 Governor's bill, and yet we're very worried that our bill will be  
25 tied to that, and that the Lancaster bill will be signed into law  
26 and we will have no specific assurances of the kind of measures  
27 that child care needs.  
28



1 We'll be working, I hope, with the Commissioner and the  
2 Department to do what we can to assure that child care gets what  
3 it needs at the end of this session, but I would appreciate your  
4 vigilance as those measures move forward to work with Senator  
5 Seymour and with Assemblyman Lancaster to make sure that we get  
6 what we need at the end of the session.

7 CHAIRMAN ROBERTI: Very good. Thank you very much.

8 Next witness.

9 MR. MILLER: Mr. Chairman, Members, I'm Steven Miller.  
10 I'm Executive Director of Insurance Consumer Action Network. I'm  
11 a consumer advocate on insurance issues, and insurance issues are  
12 all that my organization is concerned with. As such, I've had  
13 some considerable experience in dealing with the Department of  
14 Insurance and Commissioner Gillespie.

15 The Commissioner is clearly qualified to serve as  
16 Insurance Commissioner, and as a matter of fact, I fully expect  
17 that she will be confirmed.

18 This Commissioner is more skillful, both politically and  
19 with the media, than her predecessor. I'm concerned that that  
20 skillfulness on the Commissioner's part ought not to be a  
21 criteria by which the Commissioner is confirmed for this  
22 important office.

23 I feel, Mr. Chairman, compelled to speak out on this  
24 appointment. The performance on the part of the Commissioner  
25 here today is not unlike the performance that we have experienced  
26 with her in an effort to work with her since she's been holding  
27 office. We find that there is an adequacy of the rhetoric and an  
28 inadequacy in the performance.





1           It is for that reason that I'm speaking out in  
2 opposition of this appointment as an effort to signal very  
3 clearly how we feel the significance of this role is, and that  
4 the Commissioner ought to have a priority of protecting the  
5 consumer interests rather than, as it appears, this  
6 Commissioner's priority is one of protecting the insurance  
7 interest.

8           As a matter of fact, some questions have been raised  
9 here today that very much speak to that conclusion on my part.  
10 Senator Petris, you raised the question -- raised the issue that  
11 the Commissioner had found that there had been evidence of  
12 excessive rates. As a matter of fact, in the report that the  
13 Commissioner has issued from a series of hearings that were held  
14 last year, there is specifically a finding that no evidence of  
15 excessive rates in relationship to losses was established. This  
16 at a time of dramatic increases and dramatic increase in  
17 premiums, and also extraordinary profitability of the property  
18 casualty companies, some 605 percent increase in profits from --  
19 over 1985. Yet the Commissioner saw fit, although witness after  
20 witness testified to their own experience with excessive rates,  
21 of the principle finding of this report is that there was no  
22 evidence of excessive rates.

23           Yes, it's true that immediately after these hearings the  
24 Commissioner issued a request that the insurance companies would  
25 notify the Department of Insurance with their justification for  
26 any increase greater than 25 percent. At least one insurance  
27 company has interpreted this directive somewhat differently.  
28



1 I have before me a letter from Allstate Insurance  
2 Company that I'll just quote the first sentence from. It says:

3 "Dear Policy Holder:

4 "Recent legislation in the State of  
5 California requires insurance companies  
6 to notify their commercial policy holders  
7 in writing when renewal premiums will in-  
8 crease by more than 25 percent."

9 And this company goes on to notify this policy holder of such an  
10 increase.

11 I would like to at this time take the opportunity to  
12 make a public records request of the Commissioner under  
13 Government Code 6250 that the Commissioner furnish to my  
14 organization each and every letter that the Department has  
15 received from insurance companies, and each and every letter that  
16 the Department has issued to insurance companies challenging  
17 their increase of rates above the 25 percent.

18 I also noted that the Commissioner has gone into great  
19 detail on her concerns, sharing with Members of this Committee on  
20 the Medigap issue, the so-called Medicare supplement policies  
21 known as Medigap. And yet the Department has no position  
22 whatsoever on legislation that the Assembly has moving now to  
23 address this very serious problem.

24 We find that the Commissioner is very much on the  
25 sidelines in terms of a legislative program. Issues that were  
26 raised here today, both on antitrust and a measure that  
27 Assemblyman Lloyd Connelly has introduced on flex rating that  
28





1 would specifically address the concerns of Mr. Roberti as far as  
2 putting some caps on the oscillation of premiums, the Department  
3 is on the sidelines on that issue.

4 There have been a fair number of other examples where  
5 the Department has responded after there has been substantial  
6 public attention. It's true this Department has issued more  
7 press releases than any time in history that we've been able to  
8 determine, but the affirmative program on the part of the  
9 Department is somewhat lacking.

10 I'd be -- I must say that I don't come here in  
11 opposition in any personal way towards you, Commissioner. I find  
12 that you have made an effort to communicate in a better way than  
13 your predecessors. It was a difficult decision to make. It's  
14 not something that I take lightly. It's only because of my deep  
15 concern for the problems that consumers are having in this state  
16 regarding insurance issues, and my observation that the consumers  
17 of this state have not been well served by this Commissioner.

18 CHAIRMAN ROBERTI: Senator Petris.

19 SENATOR PETRIS: A couple questions.

20 The first one, do you have information, you mentioned a  
21 600-something increase in profitability. I read somewhere just  
22 last week that the insurance industry's had the most profitable  
23 year in its history last year, meaning the casualty insurance,  
24 not life insurance.

25 MR. MILLER: Yes, Senator Petris, that's correct. The  
26 industry has accumulated more in surplus, which is the equivalent  
27 in the property casualty industry to operating profits in other  
28



1 industries, more surplus in one year, some \$12 billion in  
2 additional surplus, than they had accumulated in their entire  
3 history prior to 1974.

4 SENATOR PETRIS: Does that suggest a crisis in the  
5 industry to you?

6 MR. MILLER: It suggests a crisis to consumers.

7 SENATOR PETRIS: We had some legislation last night in  
8 the Judiciary Committee crying about the crisis in the industry  
9 requiring a reduction and putting caps on the awards that would  
10 be given to persons who were injured because of the crisis in the  
11 industry.

12 I take it, based on those figures, you don't agree with  
13 that conclusion?

14 MR. MILLER: No, I don't agree at all.

15 SENATOR PETRIS: Can you give me those figures and their  
16 sources? Not right now.

17 MR. MILLER: Yes, Senator, I'd be happy to.

18 SENATOR PETRIS: Before you leave or you can drop me a  
19 note.

20 MR. MILLER: Yes.

21 SENATOR PETRIS: The second question is, to the extent  
22 that you disagree with the policy or lack of policy, isn't that  
23 really the policy appointing authority?

24 I know this is the only way we can get to the appointing  
25 authority, but doesn't that really comply with the known policy  
26 of the appointing authority?  
27  
28



1 MR. MILLER: The mission of the Department of Insurance,  
2 as stated in the statute, as stated in their budget, is the  
3 protection of policy holders. The performance of the Department  
4 reveals to me a greater attention, a greater effort, towards the  
5 protection of the industry.

6 The statutory authority is there. Granted, much of it  
7 is discretionary, but I'd be the first to come to the defense of  
8 the Commissioner in asserting her authority against any challenge  
9 that might be mounted by the industry on that exercise of  
10 authority.

11 SENATOR PETRIS: I was thinking of the Governor not the  
12 industry.

13 MR. MILLER: The laws are on the books that grant to the  
14 Commissioner certain authorities.

15 CHAIRMAN ROBERTI: Let me interject based on this line,  
16 because my feeling has generally been, certainly with the current  
17 level of administration of the insurance laws and not so much  
18 with what went on before which I thought was pretty tepid, that  
19 the problem is not that the laws aren't on the books rather than  
20 the problem with the enforcer.

21 Let me just throw out the two cases that we've been  
22 talking about, the kinds of cases we've been talking about. If  
23 you could, help me and tell me if it's the question of whether  
24 the laws are or aren't on the books, or maybe the laws are on the  
25 books but we just haven't had the enforcement.

26 What would you do, if you're talking about stringent  
27 protection, for the consumer where it appears that the insurance  
28





1 companies fixed rates, calling it advisory tables or whatever,  
2 but really, if two oil companies or two automobile companies were  
3 doing it, it would be called fixing rates, not advising each  
4 other on what the market would allow or advising each other.

5 Does the Commissioner have that authority along those  
6 lines, or is the problem that antitrust doesn't apply to  
7 insurance companies?

8 MR. MILLER: Well, it is the antitrust immunity that  
9 allows the companies to engage in those anticompetitive  
10 practices.

11 The Commissioner clearly could be in the lead in seeking  
12 the repeal of that immunity, both on the federal level under the  
13 McCarren-Ferguson Act and in California under the immunity of the  
14 Cartwright Act.

15 As an intermediate step, it seems to me, the  
16 Commissioner could issue a bulletin putting into some official  
17 language her comments here today that I welcome, where she has  
18 concerns about the use of these advisory rates.

19 The Commissioner could do that, could seek immediately  
20 to prohibit the use of advisory rates in California, and I do  
21 believe that it's legitimate that the actual loss cost be shared  
22 so the Commissioner could issue strict guidelines and require the  
23 companies to follow those guidelines, and should a company choose  
24 to challenge the Commissioner's authority to issue that bulletin,  
25 let them attempt to do that. But rather the Commissioner --

26 CHAIRMAN ROBERTI: She could issue guidelines that would  
27 constrain them from coming up with these advisory rates?  
28



1 MR. MILLER: Yes, the Commissioner could issue a  
2 bulletin that would request that the companies in California do  
3 not use the -- that ISO, as a licensed agency in California,  
4 cease from developing advisory rates in California.

5 It probably would follow that ISO would challenge her  
6 authority to do so, but that would at the very minimum move the  
7 Commissioner off the sidelines.

8 SENATOR PETRIS: Wouldn't that be a problem of the  
9 immunity though? Don't they have the immunity in their favor?

10 MR. MILLER: Well, the immunity is an immunity from  
11 prosecution under the antitrust. Where other industries get  
12 together to establish a rate that they would like to follow,  
13 share expense data, share trending, do those sorts of things, we  
14 could prosecute them, get treble damages, and achieve both civil  
15 and criminal sanctions.

16 They are immune from that, but by doing --

17 SENATOR PETRIS: What's the penalty if they ignore the  
18 guideline?

19 MR. MILLER: Well, the Commissioner has been skillful in  
20 her reports that she has made to the Legislature in saying that  
21 this policy that they adopt of job owning, of requesting that the  
22 companies do or do not so certain things, has proved to be  
23 effective. I think this would be an appropriate area to test  
24 that technique.

25 The Commissioner has not thus far done so, although she  
26 has, it's true, scheduled a hearing for June 3rd to consider this  
27 issue and perhaps that would be an outcome of that hearing.  
28





1 CHAIRMAN ROBERTI: What would you say Commissioner ought  
2 to do in the situation where companies base their rates on  
3 outside investments?

4 MR. MILLER: Companies do indeed base their rates on  
5 their likely investment income.

6 CHAIRMAN ROBERTI: And that fluctuates so dramatically  
7 when rates are based on investments.

8 MR. MILLER: Right. The Commissioner's concern there,  
9 it seems to me, is that the ISO in promulgating the advisory  
10 rate, ignores the expected investment return, and therefore the  
11 rate could be excessive on its face.

12 The Commissioner, it seems to me, has an opportunity to  
13 support legislation that now is moving through the Assembly.

14 CHAIRMAN ROBERTI: I agree and I wish the Commissioner  
15 would support the legislation.

16 In my own mind right now, I'm a confirmation vote.

17 MR. MILLER: Right.

18 CHAIRMAN ROBERTI: Leaning toward an aye vote mainly  
19 because it's the judicious thing to do to try to get along with  
20 the Governor on a major appointment when the person's  
21 well-qualified, but that's not the only reason.

22 The other reason is that failure to advocate isn't, I  
23 don't view, a major aspect of the Commissioner's job. The  
24 enforcement of the existing laws, that's the big thing. And if  
25 there's some dereliction of duty, in the enforcement of the  
26 existing laws, then that would really put a whole different  
27 coloration on my vote.  
28



1 Failure to advocate is something I truly wish wouldn't  
2 be the case, and that'll enter into my mind, but really this  
3 whole business is are the laws tough enough and that the  
4 Commissioner is failing to move on them.

5 MR. MILLER: I can't comment on --

6 CHAIRMAN ROBERTI: Your testimony is very good.

7 MR. MILLER: Thank you.

8 CHAIRMAN ROBERTI: It's excellent for the kinds of  
9 things that are moving through the Legislature, but it doesn't  
10 convince me, and I think maybe that's the main motivation that  
11 you're here for, it doesn't really convince me that this  
12 Commissioner is derelict in her duties.

13 MR. MILLER: Nor do I mean to imply that she is,  
14 Senator.

15 I am suggesting, however, that there is an abundance of  
16 authority presently on the books that allow the Commissioner  
17 substantial discretion to go after some of the practices and some  
18 of the conduct on the part of the insurance companies that have  
19 been raised here today, quite apart from the lack of advocacy.

20 I agree with you, that it's not any sort of test on  
21 whether an appointee ought to be confirmed whether they are an  
22 advocate or not.

23 I raise that only in the context of an apparent  
24 contradiction where we have the nominee appearing to suggest to  
25 this Committee that she has a wish list, that she wishes things  
26 were to be so, and that things could happen, yet we have within  
27 this building the opportunity for those wishes to come true and  
28



1 the Commissioner hasn't blown out the candle, and she could do  
2 so.

3 We would like to see her do that. Rather, we have been  
4 met with a history of good rhetoric and fair hostility towards  
5 the consumer organizations. As a matter of fact, the  
6 Commissioner has issued a memorandum to all employees sort of  
7 cutting down the free exchange of communication between organized  
8 consumer groups and the Department. It restricts communication  
9 specifically between two organizations, Consumers Union, my own  
10 organization Insurance Consumer Action Network, and myself as a  
11 named individual, to two employees of the Department in a  
12 memorandum signed by the Commissioner that went to all employees.

13 This again is an effort, it seems to me, that  
14 contradicts an attitude of openness, of working with organized  
15 consumer groups in an effort to better serve consumers.

16 I think substantial issues have been raised here. The  
17 Commissioner has been asked to furnish additional information.  
18 There has been healthy dialogue.

19 I would urge, Senator, that there is enough that the  
20 Commissioner by way of homework to bring back to this Committee  
21 that, at a very minimum, a vote on the confirmation could be  
22 postponed until those reports have been provided to the Committee  
23 from the Commissioner. Perhaps that would give me some better  
24 time to perhaps research specifically in answer to your question  
25 and try to give you a better answer.

26 CHAIRMAN ROBERTI: Thank you.

27 MR. MILLER: Thank you.  
28





1 CHAIRMAN ROBERTI: Are there any other witnesses?

2 Commissioner Gillespie, you can rebut.

3 MS. GILLESPIE: The memo that Mr. Miller had with him is  
4 a memo whereby I asked specific people within the Department to  
5 act as contacts to the two consumer groups that he was just  
6 talking about.

7 It is not a negative memo. It is meant to be a  
8 positive, helpful memo. Two people that would serve as contacts:  
9 one because of the fact that Consumers Union is particularly  
10 interested in the aging area, in the Medigap area, so I have the  
11 guy who is head of that department talking to them particularly;  
12 and with regards to ICAN, Mr. Miller, I specifically have asked  
13 the Chief of the Consumer Affairs Division to act as his go-  
14 between so he can get what he needs.

15 I meant it as a positive and not as a negative.

16 CHAIRMAN ROBERTI: Fine. I hope you don't take any  
17 ethnic pun intended, but you're very, very clever and very, very  
18 smart, and I think of the pun, "Beware of Greeks bearing gifts."

19 (Laughter.)

20 MS. GILLESPIE: There are two of us who would object to  
21 that.

22 (Laughter.)

23 SENATOR PETRIS: That's been a misquote.

24 (Laughter.)

25 SENATOR PETRIS: The true quotation, which really goes  
26 back to Confucius in his observance, is: "Beware of Turks  
27 bearing gifts."  
28



(Laughter.)

MS. GILLESPIE: Mr. Miller does have a point with regards to the fact that the Department of Insurance, at least since I have been the Insurance Commissioner, has been much more involved with the obligations of the laws than legislation. That is true. That is correct. And it's something that I intend to do better with. I do intend to strengthen the Department's office in Sacramento to provide more help.

But frankly, Mr. Chairman, in terms of the problem that we had facing us, and the problems that I faced when I took over last July, I felt that it was much more important to immediately do those things that I could do administratively.

I do not agree with Mr. Miller that I can issue a memorandum which would forbid advisory rates. I don't believe I have that authority.

I would have it if the insurance industry agreed to do it voluntarily. That is the only way it could be done. That is something which I specifically believe would take legislation, and there is this hearing that is coming up on June 3rd.

CHAIRMAN ROBERTI: Very good.

Are there any further questions? Senator Petris.

SENATOR PETRIS: I'd like her to comment on two or three other areas.

One is the advisory committee. That was pretty harsh criticism.

MS. GILLESPIE: Yes. Can I comment on that?

SENATOR PETRIS: Take them one at a time.





1 MS. GILLESPIE: Before coming here today, I did not want  
2 to interject any comment at that point, but before coming here  
3 today, I received a telephone call from the other co-chair of the  
4 Consumer Advisory Panel. She specifically told me that she had  
5 been contacted by Julie Cardenas who told her she would be coming  
6 here to testify. And she told her that she was prohibited from  
7 making any reference that she was representing the Panel.

8 I was disturbed to hear references to "we", because it  
9 is my understanding that in coming here, Ms. Cardenas represents  
10 herself and no one else on the Panel.

11 There is in fact another co-chair. And there was an  
12 attempt to put together a meeting, but there was no quorum that  
13 could be brought about.

14 Now, the other comments that Julie made with regards --

15 SENATOR PETRIS: What about the obligation that three  
16 meetings were cancelled?

17 MS. GILLESPIE: That's what I was coming to now.

18 That is correct and true. My first two appointments to  
19 the Consumer Advisory Panel when vacancies occurred -- basically  
20 I inherited what my predecessor had put together -- when  
21 vacancies occurred, I appointed Steve Miller and Julie Cardenas.  
22 Those are my only two appointments on the Consumer Advisory  
23 Panel.

24 Shortly after they came on board, we had a separate  
25 meeting with Wally -- Common Cause -- Zelman of Common Cause,  
26 Julie Cardenas and Seven Miller. And they gave me several ideas  
27 of how they felt the Panel should be run. They felt that we  
28



1 needed to do some things differently and they also felt that the  
2 composition of the Panel needed to be different.

3 At that time I also heard that there was going to be yet  
4 another bill with the formation of the Panel as its intent. I  
5 support that bill. And I felt that in view of all the changes  
6 that were taking place, the best thing would be to wait until the  
7 formulation of the policy on the part of the Legislature.

8 And things are in limbo; it is correct. I am -- I felt  
9 that in view of the fact that all these things were happening, it  
10 would be better, and I had received all these new suggestions, it  
11 would be better to hold it in limbo, and I did.

12 SENATOR PETRIS: For how long?

13 MS. GILLESPIE: I am hoping --

14 SENATOR PETRIS: Until the bills are over?

15 MS. GILLESPIE: That's what I was thinking, of doing it  
16 in that fashion.

17 SENATOR PETRIS: But you haven't taken a position on  
18 most of the bills.

19 MS. GILLESPIE: Well, it's true that we have not taken  
20 an official position with regards to many bills. We are working  
21 with Mr. Calderon in that one, though; we definitely are.

22 SENATOR PETRIS: Are you free to jump into any  
23 legislation and take a position?

24 Let's take a very basic major one, immunity; getting rid  
25 of the immunity. Are you free to establish a policy and go into  
26 a support or oppose without clearing it with the Governor?  
27  
28



1 MS. GILLESPIE: No. We speak for the Governor, and  
2 basically everything is cleared through his office. We work  
3 cooperatively as part of the team.

4 SENATOR PETRIS: Do you see yourself as an advocate  
5 within the administration even though you can't do it outside for  
6 particular bills or against them?

7 Let's say immunity. Suppose you were convinced,  
8 personally, that in spite of all these complex things that we  
9 talked about earlier, let's say you were convinced that it's in  
10 the interests of the consumer in this State and the long-range  
11 industry as a whole to get rid of that immunity.

12 Do you see your role as one of pounding on the  
13 Governor's desk and urging him to go that way, or are you just  
14 supposed to sit back and wait for directives?

15 MS. GILLESPIE: No, we don't. I'll tell you how it  
16 works.

17 We really work very cooperatively and very much as a  
18 team. I view that my role is to make recommendations to the  
19 Governor from my perspective.

20 SENATOR PETRIS: Is that encouraged by him?

21 MS. GILLESPIE: Oh, yes. Absolutely, totally.

22 Then what happens is, we work within the administration  
23 so that if there is a bill which, say, effects more than one  
24 agency within the executive, we work together and iron out our  
25 differences. Then we go to the Governor's Office so that by the  
26 time a recommendation comes out of the Governor's Office, a  
27 position on a piece of legislation comes out of the Governor's  
28 Office, it is a consensus approach. This is how we work it.





1           SENATOR PETRIS: And you had your input.

2           MS. GILLESPIE: Yes.

3           SENATOR PETRIS: One final thing, and I know this is  
4 dragging out.

5           Child care.

6           MS. GILLESPIE: Yes.

7           SENATOR PETRIS: I don't think you commented on any of  
8 those problems.

9           MS. GILLESPIE: Okay. Child care is a particular  
10 problem. The issue right now is that we not hearing very much  
11 from consumers any more. It's true that Sharon Kalemkiarian and  
12 her group continue to be very active.

13           What you have to realize is that the child care problem  
14 is the result of the Mission problem. Mission Company, the one  
15 that went bankrupt, is the one that was writing an enormous  
16 number of these policies. It was the most significant writer of  
17 child care, of small child care business in California.

18           SENATOR PETRIS: Was their financial demise in any way  
19 related to the claims?

20           MS. GILLESPIE: Oh, heaven's no. It was just an  
21 infinitesimal amount of their problems. No, no, no.

22           SENATOR PETRIS: Why should that be the cause of the  
23 problem?

24           MS. GILLESPIE: What happened is that they disappeared  
25 from the market, and there weren't enough people coming in to  
26 take their place back in the market.

27  
28



1           SENATOR PETRIS: If every Cadillac agency in this town  
2 disappeared, there'd be a drove of other dealers rushing to get  
3 those franchises; right?

4           Now, if there's no track record to support a withdrawal  
5 because of claims, and that's been established that it wasn't  
6 because of any excessive claims, why haven't other companies  
7 rushed in to get that business?

8           MS. GILLESPIE: I think Sharon is correct. They are not  
9 interested in that business. They don't understand it. They are  
10 not comfortable.

11          SENATOR PETRIS: Is it just this fear they speak of, of  
12 something that might happen in the future?

13          MS. GILLESPIE: You know what it is --

14          SENATOR PETRIS: In an area that's not even covered?

15          MS. GILLESPIE: Well, but they don't think that the  
16 courts are going to let them get away with that.

17          But the problem that you have in child care is very  
18 small businesses, very small premiums. And the potential of not  
19 many but enough large claims that they would rather put their  
20 money in other products. That is really the problem that we have  
21 in child care.

22          Now, we are working on that mandatory joint underwriting  
23 association where we had a lot of difficulty in bring personal  
24 lines in. Child care is predominantly, you know, a personal  
25 lines type of coverage.

26          We did get it through, though, with personal lines in  
27 there in order to do two things: to have child care and foster  
28





1 care as part of the mandatory pooling that we're going to make  
2 available once this bill passes. I believe that's the way to go  
3 with child care.

4 SENATOR PETRIS: Thank you.

5 CHAIRMAN ROBERTI: Thank you very much.

6 Well, I think we're ready for a motion.

7 SENATOR CRAVEN: I would move the confirmation of Ms.  
8 Gillespie to the Floor.

9 CHAIRMAN ROBERTI: The confirmation of Roxani Gillespie  
10 has been recommended to the Floor.

11 Secretary will call the roll.

12 SECRETARY WEBB: Senator Ellis.

13 SENATOR ELLIS: Aye.

14 SECRETARY WEBB: Senator Mello. Senator Petris.

15 SENATOR PETRIS: Aye.

16 SECRETARY WEBB: Senator Craven.

17 SENATOR CRAVEN: Aye.

18 SECRETARY WEBB: Senator Roberti.

19 CHAIRMAN ROBERTI: Aye.

20 The vote is four to nothing; confirmation is recommended  
21 to the Floor.

22 Congratulations. We'll take it up in about two weeks;  
23 which is what we usually wait.

24 I guess there was some request, not formal, but a  
25 request for some information. If in the process you could get  
26 that to us, we'd appreciate it.

27 Thank you.  
28



1 (Thereupon this portion of the Senate  
2 Rules Committee hearing was terminated  
3 at approximately 5:03 P.M.)

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I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

29<sup>th</sup> day of May, 1987.

  
EVELYN MIZAK  
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APPEARANCES

MEMBERS PRESENT

SENATOR DAVID ROBERTI, Chairman

SENATOR WILLIAM CRAVEN, Vice Chairman

SENATOR JOHN DOOLITTLE

SENATOR HENRY MELLO

SENATOR NICHOLAS PETRIS

STAFF PRESENT

CLIFF BERG, Executive Officer

PAT WEBB, Committee Secretary

RICK ROLLENS, Consultant on Bill Referrals

NANCY MICHEL, Consultant on Appointments

ALSO PRESENT

EUGENE A. BOSTON, M.D., Member  
Air Resources Board

RANDALL M. WARD, Director  
Department of Conservation

ADELBERT A. PIERCE, Director  
Department of Motor Vehicles

RICHARD CHAVEZ, Vice President  
California State Personnel Board

GLORIA A. CARRILLO, J.D.

JESSE ORTA, Employee  
Department of Veterans Affairs

JOHN WAHL, Chair  
Social Justice Commission

ALICE MANSUETI, President  
American Mexican War Mothers Organization

APPEARANCES (Continued)

BILL GARCIA, Employee  
Department of Veterans Affairs and  
Member, National G. I. Forum

MICHAEL KELLY, Former Employee  
State and Consumer Services Agency

STEVE SANDERS, Member  
California Union of Safety Employees

# I N D E X

## Page

Proceedings

1

### Governor's Appointees:

EUGENE A. BOSTON, M.D., Member  
Air Resources Board

1

Questions by SENATOR PETRIS re:

Air Quality

2

California's Growing Population

3

California Standards vs. Federal

4

Trucking Problems

4

California's Leading Problem

5

Smog Dissolver

6

Acid Rain

6

Motion

8

Committee Action

8

RANDALL M. WARD, Director  
Department of Conservation

8

Motion

9

Question by CHAIRMAN ROBERTI re:

Programs to Increase Conservation

9

Questions by SENATOR PETRIS re:

Shortage of Technical Staff

9

Earthquake Safety

10

Dog as Early Warning Source

11

Committee Action

12

ADELBERT A. PIERCE, Director  
Department of Motor Vehicles

12

### Witness in Support:

RICHARD CHAVEZ, Vice President  
California State Personnel Board

14

### Witnesses in Opposition:

GLORIA CARRILLO

15



I N D E X (Continued)

	<u>Page</u>
JESSE ORTA, Employee Department of Veterans Affairs	17
Questions by SENATOR MELLO re:	
PIERCE's Function at DVA	24
Explanation of Term Used	25
Questions by SENATOR CRAVEN re:	
Disobeying Commander's Orders	27
Enthusiasm vs. Departmental Policy	28
Systemic vs. Ethnic	29
JOHN WAHL, Chair Social Justice Commission	30
Question by SENATOR PETRIS re:	
Contractions	34
Question by SENATOR MELLO re:	
Deficiencies in READER's Statement	35
Recommendation by CHAIRMAN ROBERTI	36
ALICE MANSUETI, President American Mexican War Mothers Organization	38
WILLIAM GARCIA, Member National G. I. Forum and Employee, Department of Veterans Affairs	39
Questions by CHAIRMAN ROBERTI re:	
Pressure on Organizations	42
Source of Threat	43
Questions by SENATOR MELLO re:	
Date and Time of December Meeting	47
Questions by SENATOR PETRIS re:	
Persons Present at December Meeting	48

I N D E X (Continued)PageWitnesses with Concerns:

MICHAEL KELLY, Former Employee  
State and Consumer Services Agency 49

## Questions by SENATOR PETRIS re:

Time of December, '83 Meeting 51  
Discussions of AB 1 51  
Other December Meetings 52

STEVE SANDERS, Member  
California Union of Safety Employees 54

## Questions by SENATOR MELLO re:

Reference to Appointee 61  
Position of CAUSE on Confirmation 62

Rebuttal by MR. PIERCE 64

## Questions by SENATOR PETRIS re:

Time Limit on Driver Tests 65  
Reason for Centralizing Investigators 67

## Questions by SENATOR MELLO re:

Anti-veteran Statements 73

## Questions by SENATOR PETRIS re:

ORTA's Allegations 74  
Relationship with ORTA 74  
Advocacy vs. Program 75

Termination of Proceedings 80

Certificate of Reporter 81



P R O C E E D I N G S

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CHAIRMAN ROBERTI: Governor's Appointees appearing today, Dr. Eugene A. Boston, Member of the Air Resources Board.

DR. BOSTON: Good afternoon. I'm Dr. Eugene A. Boston.

CHAIRMAN ROBERTI: Doctor, we'll ask you what we ask all the Governor's appointees, and that is why you feel you're qualified to assume this position.

DR. BOSTON: Thank you, Senator.

Yes, I believe I am well qualified to serve on the California Air Resources Board.

Possibly my best qualification is my concern for the health of the citizens of this state. Having practiced medicine in this state for 30 years now, I have seen many illnesses of all sorts, particularly those that are related to smog have come to my attention. And I find it very exciting to be able to influence at this level some of the decisions that will be made to help improve the health of our citizens.

Also, I have a strong background in farming. My family has been in farming in the San Joaquin Valley for about a hundred years now, and I have seen the effect that one crop loss can have on this -- on these people. And of course now with the influence of smog on the crops and the damage to the grapes, and tomatoes, and cotton, just a loss of 10 or 15 percent of the crop can be very devastating for them.

I'm also very familiar with the workings of the automobile and the internal combustion engine, having been a

1 backyard hobbyist for a number of years. I know what a  
2 carburetor is, what a fuel injection system is, and a catalytic  
3 converter, and I won't be easily swayed by automotive jargon.

4 And yes, I know what smog is, too. I can smell it, and  
5 I can taste it, and I've felt it having lived in the South Coast  
6 Basin for a number of years. That's something that I would like  
7 very much to see cleared up greater than it has been already.

8 CHAIRMAN ROBERTI: Any questions of Dr. Boston? Senator  
9 Petris.

10 SENATOR PETRIS: That leads into the first question:  
11 How are we doing? Looking at the state as a whole in our air  
12 quality, how are we doing?

13 DR. BOSTON: Actually, Senator, we've been quite  
14 pleased, I think. Most of us who live in the South Coast Basin  
15 have noticed that during the last year we've had the best summer  
16 that we've had for probably six or eight years. There were more  
17 clear days where we could see the surrounding mountains, and we  
18 had fewer smog alerts this summer than we did for a number of  
19 years.

20 So, we think that our programs are working; they are  
21 taking effect. There's still a lot to be done, but it is an  
22 improvement.

23 We're constantly fighting the inflow of people to the  
24 state of California. So we make a little bit of progress in one  
25 area, and then another million people move in and we kind of lose  
26 that progress.



1           SENATOR PETRIS: A few years ago there was a scientific  
2 conference of some kind in California, a national group, and they  
3 issued a policy statement on the smog problem. They said that  
4 they felt that the L.A. Basin just could not physically support  
5 more than a certain number of people, and they'd already reached  
6 the danger point. It would get worse and worse because of the  
7 air pollution problem.

8           We found out we can't prevent people from moving around  
9 from one part of the country to the other or within the state.

10           Is it feasible to try some long-range thinking about  
11 offering inducements to people to even go so far as to build new  
12 communities in other parts of the state at some optimum size,  
13 offer them some kind of inducements -- you can't compel them --  
14 in order to limit the crush down there in the Basin? Does that  
15 make sense from a long-range planning standpoint?

16           DR. BOSTON: I'm sure there is merit to that, Senator  
17 Petris, but I know that we're squeezing every last bit of  
18 improvement out of the tailpipe that we can. And recently we've  
19 managed to lower smog standards yet that will be going into  
20 effect shortly.

21           It seems like some form of rapid transit, or rail system  
22 to help unclog the freeways would be very helpful. But every  
23 time we have a Super Bowl Sunday, and they see this beautiful  
24 sunshine in California when it's snowing back East, it's hard to  
25 keep people from moving out here.

26           SENATOR PETRIS: Every time there's a big wave of  
27 storms, we get more people.  
28



1 DR. BOSTON: More people coming to California.

2 SENATOR PETRIS: Well, we might deflect them to other  
3 parts of California, is what I'm saying.

4 Are our standards still higher than the feds? There was  
5 some vigorous campaigning not long ago to weaken our standards  
6 and have the federal apply.

7 Where are we now with respect to the federal standards?  
8 Are we tougher than theirs or not?

9 DR. BOSTON: We still are tougher, and we still have our  
10 California car which has to meet higher standards than the other  
11 49 state cars.

12 Where we've had a real problem is with the trucking  
13 industry. We have been limited by the Interstate Commerce laws,  
14 and we are now tagging on to some of the EPA standards for the  
15 trucks and diesels that will be going into effect in 1988-89,  
16 which will help that problem considerably.

17 As far as the automobile exhaust emissions, we are still  
18 tougher than the other 49 states.

19 SENATOR PETRIS: Aren't there a lot of trucks that stay  
20 within the state that don't engage in interstate activities?

21 DR. BOSTON: Well --

22 SENATOR PETRIS: They're just all blanketed under  
23 federal law?

24 DR. BOSTON: The problem has been in the past that since  
25 California rules were tough, the truckers would just buy their  
26 trucks in a different state, put a license plate on it from a  
27 different state, then drive to California. And according to the  
28

1 Interstate Commerce rules, we've had no way of preventing them  
2 from coming here.

3 SENATOR PETRIS: Even if it's a truck used within one  
4 small community in California and never goes outside?

5 DR. BOSTON: I'm not sure about that, but I think they  
6 get around that by stating that they have a home base or are  
7 registered in another state at least.

8 SENATOR PETRIS: You said we have a long way to go.  
9 What do you think the leading problem is that we need to tackle?

10 DR. BOSTON: Personally I hate diesel exhaust. I'd love  
11 to get the diesel exhaust cleared up.

12 SENATOR PETRIS: Is that from a hazards standpoint or  
13 just smog?

14 DR. BOSTON: It is a hazard. We've been hearing in the  
15 past that it wasn't so much of a hazard, but it's been shown very  
16 definitely that the hydrocarbons in the diesel exhaust is  
17 carcinogenic and does cause cancer. It's dirty; it dirties our  
18 clothes; it dirties our houses, our sheets, everything else.  
19 It's just hard to breathe when you're walking behind a bus in Los  
20 Angeles; you just can't breathe.

21 So I think that with the experimentation we're doing now  
22 with methanol and with the new catalytic converters they're  
23 talking about for the trucks, I think within a few years this  
24 will be greatly improved.

25 SENATOR PETRIS: Have you been following this other  
26 development that's been reported in the last couple of months  
27 regarding -- I don't know what it does -- it dissolves the smog,  
28

1 it does something, and it's supposed to be the greatest thing  
2 that's happened in the smog field since we discovered it.

3 DR. BOSTON: I did read that, and it's a so-called  
4 swimming pool acid thing.

5 SENATOR PETRIS: Yes, that's what it is.

6 Does that seem promising to you?

7 DR. BOSTON: Our staff tells me that at the moment it's  
8 not very promising. It would take a load of that acid the size  
9 of a trailer full to drag along behind your car to be effective  
10 for a passenger car. They're working with very small diesel  
11 engines in their experimental work before it could be applied to  
12 a passenger car. I think it's far off, at least that's what our  
13 staff tells us.

14 SENATOR PETRIS: Another false promise. The account I  
15 read was very glowing, and this was going to be the answer.

16 DR. BOSTON: This happens to me all the time. The  
17 National Enquirer talks about a new drug that's out, and suddenly  
18 my patients are clamoring for it. And my wife says: Watch out,  
19 you're going to be asked about this drug. And it's years off  
20 before it's even available to us.

21 CHAIRMAN ROBERTI: Any further questions of Dr. Boston?

22 SENATOR PETRIS: Can I ask him one more about acid rain.

23 I keep reading more and more about acid rain. I know  
24 there's a big difference of opinion as to --

25 DR. BOSTON: Those studies are under way, and they had  
26 started when I was appointed to the Board.  
27  
28



1 I know our Board has been charged with responsibility of  
2 doing research and collecting data, and I believe that the  
3 Legislature will be getting a report this month on their current  
4 status and those findings.

5 As I understand it to date, yes, we do have acid, and  
6 yes it is being deposited in our lakes. And yes, it's probably  
7 not doing much damage so far that we're able to tell. But you  
8 know, there's a wet deposition and a dry deposition.

9 Since we don't burn coal in our state to the extent they  
10 do in the East, we don't have some of the severe problems with  
11 sulfuric acid as they do in the East. We do get nitric acid  
12 here.

13 SENATOR PETRIS: Where does our acid rain come from?

14 DR. BOSTON: It's mostly due to the burning of the  
15 fossil fuels and then the deposition of both wet and dry acids  
16 will come about. If it rains, it will pick it up from the  
17 nitrogen in the air and deposit it. If it's a dry form, it's  
18 also been found. Down where I live the fog in the Newport Beach  
19 area has been found to be very acid when there's a sudden fog  
20 condition that comes down in the low 2s, a pH of 2.2, 2.4. It's  
21 very acid.

22 So we do have it, but just what the final report will  
23 show I'm not really sure.

24 SENATOR PETRIS: It's due in a couple of months?

25 DR. BOSTON: I believe every January there's to be a  
26 report to the Legislature. I imagine that it hasn't been made  
27 yet to the Legislature.

28

1           SENATOR PETRIS: Thank you.

2           CHAIRMAN ROBERTI: Thank you.

3           Any further questions? Is there any opposition in the  
4 audience to Dr. Boston's confirmation?

5           SENATOR CRAVEN: Move confirmation.

6           CHAIRMAN ROBERTI: Senator Craven moves. The Secretary  
7 will call the roll.

8           SECRETARY WEBB: Senator Doolittle. Senator Mello.

9           SENATOR MELLO: Aye.

10          SECRETARY WEBB: Senator Petris.

11          SENATOR PETRIS: Aye.

12          SECRETARY WEBB: Senator Craven.

13          SENATOR CRAVEN: Aye.

14          SECRETARY WEBB: Senator Roberti.

15          CHAIRMAN ROBERTI: Aye.

16          The vote is four to nothing; confirmation is recommended  
17 to the Floor.

18          DR. BOSTON: Thank you.

19          CHAIRMAN ROBERTI: Next we'll go to Randall M. Ward,  
20 Director of the Department of Conservation.

21          Mr. Ward, we'll ask you the same question we ask all the  
22 Governor's Appointees: Why you feel you're qualified to assume  
23 this position?

24          MR. WARD: Certainly, Senator. Thank you.

25          I believe my 12 years of experience in state government  
26 in fiscal, management and policy related positions, both in the  
27 executive and legislative branches, would qualify me for my  
28 position.

1 CHAIRMAN ROBERTI: Any questions of Mr. Ward?

2 SENATOR MELLO: Move him.

3 CHAIRMAN ROBERTI: Senator Mello moves.

4 I don't want to let you off too easily.

5 (Laughter.)

6 CHAIRMAN ROBERTI: What programs are you envisioning to  
7 increase California's conservation?

8 MR. WARD: Well, a couple things that you, Senator  
9 Roberti, are very interested in would be the early warning system  
10 for earthquakes. There was a problem with funding in the  
11 legislation but we still have a mandate in your legislation that  
12 was signed by the Governor. The Governor did include that  
13 funding into the budget. As well as issues surrounding the  
14 methane gas problem, which again, you authored legislation to  
15 conduct a study. Our staffs are jointly working on some  
16 solutions for some subsequent legislation.

17 CHAIRMAN ROBERTI: Very good. And I've had a good  
18 working relationship with the Department.

19 MR. WARD: I'm pleased to hear that, thank you.

20 CHAIRMAN ROBERTI: Any further questions? Senator  
21 Petris.

22 SENATOR PETRIS: I want to commend you for restoring the  
23 Mine Land Reclamation Agency, or subdivision, whatever it is  
24 called.

25 I understand you're still short of technical people  
26 needed to do the job. Do you have a hydrologist yet?

27 MR. WARD: We have a hydrologist under contract.  
28



1           SENATOR PETRIS: From another agency or from the  
2 outside?

3           MR. WARD: Using the State University currently.

4           SENATOR PETRIS: Do you anticipate you'll have it  
5 adequately staffed to carry out the work that's needed?

6           MR. WARD: I will staff, add staff, and do what ever it  
7 takes to maintain that program consistent with the direction of  
8 state law.

9           SENATOR PETRIS: Are we up to date on earthquake safety?

10          MR. WARD: Well as I indicated, legislation that was  
11 authored by Senator Roberti last year gave us the ability to do a  
12 feasibility study for an earthquake early warning system for the  
13 State of California. It's a system that has been demonstrated in  
14 Japan, primarily on their high speed rail. As a result of minor  
15 shifts or strong motion in the earth's surface, it can shift  
16 their high speed rail system, and it has caused some significant  
17 catastrophes.

18          This system has been very effective in dealing with --  
19 the system actually puts the brakes on the train before anyone  
20 knows there's an earthquake.

21          There is the potential for using a system similar to  
22 that in California. We're going to be studying the feasibility  
23 of that.

24          We're also participating with the U.S. Geological Survey  
25 for a study in the Park Field area along the San Andreas Fault,  
26 studying all kinds of ground motion and measuring equipment with  
27 the idea of trying to do some longer term projections on  
28 earthquakes.

1           SENATOR PETRIS: I know we lost out to New York on that.  
2 Has that been finally confirmed by Congress, or do we still have  
3 a chance to get them to reconsider?

4           MR. WARD: I believe the ink has dried.

5           SENATOR PETRIS: It's over?

6           MR. WARD: Yes.

7           SENATOR PETRIS: There's a dog I want you to meet in San  
8 Jose that I saw on television. This little dog is supposed to be  
9 an infallible early warning source. I saw it on television. It  
10 runs under a chair at a certain time, and he's called seven out  
11 of seven so far, including this one that occurred about three  
12 days ago.

13           SENATOR PETRIS: I would urge your scouts to go out and  
14 check it out.

15                           (Laughter.)

16           MR. WARD: Senator, we're always happy to look for any  
17 kind of innovation or assistance in any way.

18                           (Laughter.)

19           CHAIRMAN ROBERTI: Any further questions? Any  
20 opposition in the audience?

21           Seeing none, Senator Mello moves confirmation be  
22 recommended to the Floor.

23           Secretary will call the roll.

24           SECRETARY WEBB: Senator Doolittle. Senator Mello.

25           SENATOR MELLO: Aye.

26           SECRETARY WEBB: Senator Petris.

27           SENATOR PETRIS: Aye.  
28

1 SECRETARY WEBB: Senator Craven.

2 SENATOR CRAVEN: Aye.

3 SECRETARY WEBB: Senator Roberti.

4 CHAIRMAN ROBERTI: Aye.

5 The vote is four to nothing; confirmation is recommended  
6 to the Floor.

7 Congratulations.

8 MR. WARD: Thank you, Senator.

9 CHAIRMAN ROBERTI: The next Governor's Appointee is Mr.  
10 Adelbert A. Pierce, Director of the Department of Motor Vehicles.

11 Mr. Pierce, we'll ask you what we ask all the Governor's  
12 Appointees; that is, why you feel you're qualified to assume this  
13 position?

14 MR. PIERCE: Thank you, Senator.

15 It's a pleasure being here today. I'd like to first  
16 take the opportunity to talk a little bit about our Department of  
17 Motor Vehicles and where we are.

18 I've been there for approximately one year, and I'd like  
19 to report that the level of service continues to increase to the  
20 California motoring public. Our consumer satisfaction is up.  
21 Our once troubled automation system has been restored to where it  
22 was before, and in fact, as we continue to automate the  
23 Department, we're actually ahead of schedule. Our phone service  
24 has increased. The quality is back. We've spent a great deal of  
25 time ensuring the reduction of errors in the programs that we  
26 administer to the public. Our inventories are down. Our  
27 turnaround time on our products that we provide to the motoring  
28



1 public has been shortened, and we're building integrity in our  
2 programs; programs such as drive tests, such as commercial  
3 vehicle operators, such as traffic violators' school. And that  
4 the emphasis is on providing better service to the consumer as  
5 indicated by the Governor's recent budget in which we requested  
6 six additional field offices to better serve the motoring public  
7 in California.

8 With regard to my personal qualifications, I've been in  
9 state service for approximately 20 years. I'm a native  
10 Californian and a product of our California education system.  
11 I'm a graduate of the State College system, and I have an  
12 advanced degree, and I'm a graduate of the F.B.I. Academy.

13 I started in the state government working for room and  
14 board as an intern in the Youth Authority. And I've done many  
15 things in state government, primarily in the area of law  
16 enforcement and law enforcement administration. I've been a  
17 narcotic agent; I've been a trainer; I've been a supervisor; I've  
18 been an office manager along the Border. I've had varying and  
19 different jobs throughout law enforcement at the Attorney  
20 General's Office and with the Alcoholic Beverage Control.

21 During the last four years, three of which I spent as an  
22 Undersecretary with a brief period of time as the Deputy Director  
23 of Finance, my day-to-day responsibilities there included  
24 administration and providing budget and program development, as  
25 well as consulting and advising the directors on program delivery  
26 and efficiency.

1 I've had increasing responsibility in state government.  
2 I've taken appropriate action. I've always chose to deal with  
3 things fairly and try to make the best decision possible,  
4 although at times some of these decisions weren't always received  
5 with universal support. In my career I've always tried to be  
6 fair and make decisions that are appropriate in the best  
7 interests of state government as well as the people we serve.

8 CHAIRMAN ROBERTI: Thank you, Mr. Pierce.

9 Are there any witnesses in support? Yes, Mr. Chavez.

10 MR. CHAVEZ: Senator, my name is Richard Chavez. I'm  
11 the Vice President of the California State Personnel Board. And  
12 in that position we oversee 125,000 state employees.

13 My first meeting with Mr. Pierce was approximately five  
14 years ago, when the Governor put together the Affirmative Action  
15 Task Force. And Mr. Pierce and I worked together on that to put  
16 together the executive order.

17 It goes further than that. The Department of Motor  
18 Vehicles is one of the few departments that has reached parity  
19 for Hispanics. And those of you that know me know that I am a  
20 fighter for parity for all people, and that California be  
21 reflective of its diverse population.

22 Again, the Department of Motor Vehicles has reached  
23 parity, and this year it has made a point to increase and, from  
24 my perspective, that's doing good in times of layoffs and in  
25 times of less money.

26 There's been a constant commitment to equal opportunity  
27 for all. And I was not asked to come today. I felt compelled to  
28

1 come and state that this confirmation should be given to Mr.  
2 Pierce.

3 CHAIRMAN ROBERTI: Thank you very much, Mr. Chavez.  
4 Anyone else?

5 Is there opposition in the audience? Let's see, we'll  
6 take opposition, and then we'll take people who have general  
7 concerns.

8 Is there opposition? We'll do it by rows. I saw about  
9 four or five hands. In the first row. In the second row. In  
10 the third row, please come forward.

11 Do you want to come forward and testify?

12 FROM THE AUDIENCE: I can testify if you want.

13 CHAIRMAN ROBERTI: If you choose to.

14 MS. CARRILLO: Senators Roberti, Petris -- he's not here  
15 right now but he's from my area, the Bay Area -- Senator  
16 Doolittle, and Senator Mello, Ms. Michel.

17 I delivered --

18 CHAIRMAN ROBERTI: And Senator Craven.

19 MS. CARRILLO: I'm sorry, Senator Craven.

20 SENATOR CRAVEN: That's all right. You'll probably hear  
21 from me later.

22 (Laughter.)

23 MS. CARRILLO: My name is Gloria Carrillo. I'm formerly  
24 a long time resident of the Bay Area. I'm a graduate of Hastings  
25 College of the Law, and a graduate of U.C. Berkeley in the area  
26 of journalism.

27

28



1 I have been active in the area of civil rights since  
2 1968. I have always been an advocate for civil rights, and have  
3 worked together with many politicians, state legislators, city  
4 and county officials. And not just from the Democratic Party,  
5 but also from the Republican Party.

6 I have always been fair, and I've always been objective,  
7 and I've always followed my education and my personal experience.

8 I have weighed a lot of the documentation that has been  
9 submitted to you from Hispanic groups and other groups as far as  
10 the conduct of Mr. Del Pierce as he was Undersecretary in the  
11 State Consumer Services Agency under Ms. Shirley Chilton.

12 And I can objectively, without any hesitation on my  
13 part, say that he should really explain why he made such  
14 allegations against members of the gay community as well as other  
15 minority groups. And there is sufficient evidence to show that  
16 Mr. Pierce also may have circumvented the authority of a very  
17 well respected and supported Chief Deputy Director at the Fair  
18 Employment and Housing Agency, Mr. Bill Garcia. And there is  
19 evidence to show that he also tried to circumvent the authority  
20 of the Director, another very, very accepted and very loved and  
21 supported Director, Mr. Mark Guerra.

22 So prior to when you confirm him, I believe it is only  
23 just and fair that he show you by sufficient evidence on his part  
24 as to why he allegedly made these remarks.

25 Thank you, and I look forward to your vote no on this  
26 confirmation.

27 CHAIRMAN ROBERTI: Thank you.  
28

1           Mr. Pierce, you'll have an opportunity to respond at the  
2 conclusion.

3           MR. PIERCE: Thank you, Senator.

4           CHAIRMAN ROBERTI: There was another witness.

5           MR. ORTA: Senator Roberti, Mr. Chairman, and Senators,  
6 my name is Jesse Orta. I work for the State of California's  
7 Department of Veteran Affairs now. I've worked with a number of  
8 departments including the Adjutant General's Office.

9           I'm the immediate past commander of the Veterans'  
10 Affiliated Council headquartered here in Sacramento, California.  
11 I'm a member -- active member or active with a number of  
12 organizations. I'm dealing specifically in this case with  
13 community-based and veterans' groups. I'm a member or active  
14 with the American Legion, Veterans of Foreign Wars, Disabled  
15 American Veterans, Pearl Harbor Survivors and Veterans, D-Day  
16 Veterans, Association of the Fleet Reserve, and several more.

17           I've been active with these organizations well before my  
18 employment with the Department of Veteran Affairs. In 1983, the  
19 new Director of the Department of Veteran Affairs met with me and  
20 asked me if I would continue my efforts on behalf of veterans and  
21 the community-based organizations of our constituency, and to  
22 continue to direct and give credit to the Department, to the  
23 administration, and so forth. I had no problem with that. We  
24 had basically our agreement to go ahead and continue doing these  
25 things for the cause.

26           We had several very good programs in '83 and especially  
27 in '84, bringing people from Southern California and getting air  
28 passage, donations, and so forth.

1 In the latter part of 1984, the Director at that time  
2 started notifying me that there was some problems with our  
3 performance. That although we had commendations from the  
4 Governor's Office, that I had received also commendations from  
5 the Director, from the California Veterans' Board, and from  
6 veterans' organizations state and national, that Mr. Pierce had a  
7 difficulty with the programs we were doing and did not encourage  
8 us, didn't want this going on.

9 My Department Director at that time indicated to me that  
10 we were doing the right thing, that he wanted me to continue  
11 doing, that he thought that there was some, perhaps, petty  
12 difficulties, and that he would be able to overcome them and not  
13 to worry.

14 In the latter part of 1984, the Director was removed.  
15 In 1985, Mr. Pierce was running the Department effectively on a  
16 daily basis. In about March of 1985, one of the Agency's  
17 appointees, Lydia Bundy, a nonveteran, a Deputy Director at that  
18 time, was directed to run the Department around the Chief Deputy  
19 Director and veteran, Mr. Matsler.

20 At that time, when Mrs. Bundy came into power, or  
21 running the Director at Agency's guidance, I was called in on a  
22 regular basis, sometimes two and three times a day, and  
23 questioned and chastised specifically for my involvement with  
24 veterans and veterans' organizations. I was told that working  
25 with veterans and providing the information and resources, and  
26 outreach -- outreach and information specifically -- was none of  
27 our damn business. That it was -- that I was not to be doing it.  
28 In fact, I was prohibited from doing it.



1 I made it clear that I was doing these things well  
2 before I worked for the Department of Veteran Affairs, that I  
3 would be doing it after I left the Department of Veteran Affairs,  
4 and that it would be unrealistic to believe that I would stop  
5 doing these things because I happened to work for the Department  
6 of Veteran Affairs.

7 I continued the programs, but new standards for  
8 performance were established for myself. They were reporting  
9 requirements, standards of attendance. I was directed to change  
10 my car pool in spite of different personal problems. I was  
11 directed to make some changes, all of which were not supported by  
12 my immediate manager, and that was the Chief of the Division of  
13 Veteran Services, Dr. Jack Herrera.

14 Dr. Jack Herrera attempted to intercede, because he was  
15 also very supportive of the very positive inroads and efforts  
16 that we had made on behalf of veterans, on behalf of the  
17 administration, and on behalf of the Department of Veteran  
18 Affairs. He met -- he reported to Lydia Bundy. He met with  
19 Lydia Bundy very regularly. He also met with Mr. Pierce and a  
20 number of other representatives from the Agency.

21 He returned, and he told me on numerous occasions that I  
22 had a problem that he couldn't overcome, that he, specifically  
23 Pierce, was out to get you. That there was no alternative. He  
24 tried to see what he could do. He was hoping to make some  
25 changes, and maybe to institutionalize a number of the activities  
26 which we had developed for and on behalf of veterans'  
27 organizations.  
28

1           These specifically -- the fact that Pierce was out to  
2 get me, was not only specifically mentioned to me by the Chief of  
3 the Division of Veterans Services, Dr. Jack Herrera, but by also  
4 Mr. John Norton, the Chief of the California State Police, and a  
5 number of other individuals, perhaps they are the most notable,  
6 and that there was not really much that could be done.

7           Ultimately at that time, I was -- I articulated in my  
8 defense several memos back through the administration by  
9 management system my intention that I was being harassed for all  
10 the things that I had been congratulated and appreciated for  
11 before that time for previous years, now going on ten years.

12           At that time, I made known also officially my intention  
13 of initiating a possible compliant or grievance, and I started  
14 looking into that alternative. I checked with the State  
15 Personnel Board. The State Personnel Board is, of course, within  
16 the State and Consumer Services Agency. I was counseled that  
17 should I initiate a complaint, that it was subject to the first  
18 initial review by, in fact, the Agency's representative at the  
19 Department of Veteran Affairs, Mrs. Bundy, and that there could  
20 be a final review at the Agency level. Perhaps I was encouraged  
21 to look at the Department of Fair Employment and Housing.

22           I checked with the Department of Fair Employment and  
23 Housing. They told me at that time they did not yet have  
24 authority to deal with state employees. They anticipated that,  
25 perhaps, by the end of that year, that there was no method yet in  
26 place to be able to handle it, and there was still confusion over  
27 the overlapping responsibility between Fair Employment and  
28

1 Housing and the State Personnel Board. And that besides that,  
2 they also worked under the Agency.

3 At this time, there were four of us. And at this time  
4 four of us Hispanic males who were pursuing looking into a  
5 complaint for the Department of Fair Employment and Housing.

6 I later, because of different counsel or guidance that  
7 it would make life even more miserable for me, reluct -- well, I  
8 withdrew my complaint.

9 Since this period of time, I think effectively what has  
10 happened is that there was an attitude, an attitude put into  
11 place in our Department of Veteran Affairs essentially that those  
12 who were working for veterans were not really appreciated. There  
13 were additionally two other individuals who were very active with  
14 and for veterans, very active. These two individuals, in fact  
15 one of these perhaps most notable is now relegated to checking  
16 fire extinguisher plans, and emergency evacuation, and fire  
17 escape plans, and so forth. He's very frustrated and  
18 dissatisfied, but also like so many other people, not willing to  
19 come forward.

20 A number of people have encouraged me to come mostly  
21 because they were not willing to. I can understand that. That's  
22 okay. They have relayed to me that there was in fact a pattern  
23 and reputation of behavior, or this type of behavior, on some  
24 individuals who have perhaps crossed the powers that be.

25 As a result of these things that were put in place by  
26 our acting Director, Mrs. Bundy, and because of the attitude that  
27 was directed towards me, and because some people were not willing  
28



1 to stand and try to question or be counted at the time, there has  
2 been a pattern established. I have been essentially branded as  
3 an outcast because I'm too active with veterans. It was none of  
4 our damn business, and I disagreed. I was directed to stop  
5 outreach and information to veterans' organizations and I  
6 disagreed.

7 I have not stopped. I have worked more on my own time  
8 at nights and evenings. And although the original Director had  
9 said that I would be compensated at least for the time and  
10 efforts put in, although not for expenses, that was fine, but has  
11 never come to pass. Although each of my immediate managers has  
12 always tried to make an effort and appreciated the things that  
13 we've been trying to do for and on behalf of veterans.

14 The attitude that has been left in place is that I am  
15 branded, and although at this particular point Mr. Pierce is no  
16 longer Director with the Agency, some of those things have  
17 remained in place. And the people that are now guarding the  
18 gates, or the cages as the case may be, haven't been told to go  
19 ahead and exercise their own individual judgments.

20 Essentially during this period of time, I had submitted  
21 my applications as a state employee for several other positions  
22 trying to improve my own position within the state system. My  
23 applications were lost. Initially they were lost. One of them  
24 was found only when one of my compatriots also had to have his  
25 in, and it was found at the last minute. This may be a  
26 coincidence. I was rejected, although I was more than qualified  
27 for several other manager positions, even just not for the job  
28 itself, but rather just to get on an eligibility list.

1           Once again, my division Chief, Jack Herrera, indicated:  
2   You know, what can I do; you know, when he's out to get you, he's  
3   out to get you. That's all there is to it.

4           Now, I have effectively been pigeonholed now where I am  
5   now for close to two and a half years. It's generally  
6   acknowledge by management within the Department of Veteran  
7   Affairs that I am in the position where I will be for the next  
8   four years at this time.

9           Effectively what I'm doing is basically trying to  
10   provide a separation of facts as I see and know them to be, and  
11   petitioning also for relief functionally, is what it amounts to.

12           I've been working there now for a number of years. I  
13   have not slowed down in my involvement with community-based  
14   organizations in the veterans' community. I have always tried to  
15   involve all people within the structure. I have never tried to  
16   focus on any one particular groups, section, activity, always  
17   knowing that as a staff officer, I bring support to my boss.

18           I'm a combat infantryman veteran from the Vietnam  
19   conflict. I served with the 173rd Airborne Brigade as a Unit  
20   Commander, Captain Company Commander. I am very active with the  
21   community-based organizations, and I'm looking forward to  
22   continuing my involvement with these organizations doing these  
23   things.

24           But the situation that has been in place, that everyone  
25   is afraid to tackle or change anything that Mr. Pierce  
26   established, to his credit, people listen when he says to do  
27   something. He needs to say stop doing it before they will.  
28

1 In this case, up to two weeks ago, I was directed to  
2 prepare a concept of the operation for the dedication of the  
3 Vietnam Veterans Memorial. This is one of my specialities,  
4 coordination of programs, and projects, and resources, and  
5 logistics administration. Sure enough, my forte.

6 But one of the things that my division manager mentioned  
7 inadvertently during the briefing of our senior management is  
8 that, as he's getting his guidance, but he's not even supposed to  
9 think about it on state time.

10 It's inconsistent. It doesn't really make sense, and  
11 effectively what it has continued to do is to reinforce in  
12 everyone's mind the fact that he's not one of the in-crowd,  
13 continue to lose his applications, continue to make -- continue  
14 to fail to cooperate.

15 This has essentially been the situation. There has been  
16 a pattern. There have been others. There are many who are not  
17 willing to stand and be counted, but this is not an unusual  
18 occurrence.

19 I think that concludes my comments.

20 CHAIRMAN ROBERTI: Thank you, Mr. Orta.

21 Senator Mello has a question, Mr. Orta.

22 SENATOR MELLO: I was trying to track your relationship  
23 with the Department of Veterans Affairs, because I went back over  
24 his background. I don't find anywhere where he was in charge of  
25 Veterans Affairs.

26 Where was he a supervisor?  
27  
28



1 MR. ORTA: He was the Undersecretary, the second in  
2 command, at the State and Consumer Services Agency.

3 SENATOR MELLO: Consumer Services.

4 MR. ORTA: Yes, sir. The Department of Veteran Affairs  
5 is one of about 11 or 12 departments under the Agency.

6 Mr. Pierce was effectively directing the activities  
7 almost on a daily basis of the Department when the Director was  
8 -- excuse me, when the Director was removed.

9 SENATOR MELLO: I have it here now. I was looking for  
10 Veterans Affairs and I couldn't find it in biography.

11 So you're stating that because of the relationship you  
12 had in that position where he was in the State and Consumer  
13 Services, you feel he would be unfit to be the Director of Motor  
14 Vehicles.

15 MR. ORTA: Yes, sir. I find that there was certainly  
16 deferential and separate treatment directed to Hispanic males and  
17 veterans who were too much veteran, who were too active. We were  
18 directed it was none of our damn business. We were directed not  
19 to provide outreach or information. And a few of us -- some of  
20 us -- some went with the flow. A few of us decided that we --

21 SENATOR MELLO: I'd like an explanation of the term you  
22 used several times because it means different things to different  
23 people. You said "he's out to get me". Just explain that a  
24 little bit further.

25 MR. ORTA: Those were -- that was a quote. Essentially  
26 that was repeated to me several times, specifically my division  
27 Chief at that time, Dr. Jack Herrera, the Chief of the Division  
28 of Veterans Services in the Department of Veterans Affairs.

1           He met at Agency on a number of occasions. He reported  
2 and met with Bundy, our Director. The Deputy was running the  
3 Department later on around the Chief Deputy, who was the veteran,  
4 and he just said: You know, I've met; he's not happy; we're  
5 doing too much for veterans. In fact, Dr. Herrera specifically  
6 told me: We're doing too much for veterans; we're doing too many  
7 things; we're too active. But he said: Don't stop.

8           SENATOR MELLO: But what I'm trying to find out is, what  
9 do you think he meant by that statement?

10           For an example, in the underworld, when they give  
11 somebody the pineapple, that sounds like it's a nice pineapple to  
12 cut up and eat, but it's throwing a hand grenade and blowing the  
13 place up.

14           MR. ORTA: Yes, sir.

15           SENATOR MELLO: What do you think it means when he said  
16 "he's out to get you"?

17           MR. ORTA: Specifically that I was in disfavor. He  
18 indicated to me that he was aware of no other reason from all of  
19 his meetings other than the fact I was too much of an advocate.

20           SENATOR MELLO: Physical harm or termination?

21           MR. ORTA: No, sir. I would not -- I would not go so  
22 far as to say physical harm, although it's been said that he has  
23 very long tentacles.

24           I do not believe that there was any threat of physical  
25 harm, only efforts to specifically by several people to undermine  
26 my effectiveness among the veterans' community and constituency,  
27 and significant and specific efforts to discredit me among my  
28 peers.



1           SENATOR MELLO: Thank you.

2           SENATOR CRAVEN: Let me ask you a question, please.

3           CHAIRMAN ROBERTI: Senator Craven.

4           SENATOR CRAVEN: Mr. Orta, as a former Company  
5 Commander, what action would you have taken if one of your  
6 lieutenant platoon leaders didn't do what you told him to do?

7           MR. ORTA: It's like any team, sir. We call everyone  
8 together. And every staff officer has a responsibility to  
9 provide input. And everyone has different ways of accomplishing  
10 the mission.

11           But we as good soldiers know that we provide our input  
12 because that's our responsibility. Not to do what everyone does,  
13 or say what everyone wants to hear, but to provide our best  
14 counsel and advice, suggestions and recommendations.

15           Then, when the Commander makes the final decision, he  
16 says: Okay, team; this is what we're going to do; we're not  
17 going to go with your plan; we're going to take this other one.

18           All right. That's fine. That's the way it's supposed  
19 to be.

20           SENATOR CRAVEN: Well suppose in this instance your  
21 commander said, "Jesse, I don't want you to do this any more,"  
22 and you persist in doing it.

23           Do you think that you're kind of moving in the direction  
24 of disfavor to the commander?

25           MR. ORTA: Yes, sir. I think a good commander would  
26 say, "Jesse, I don't want you to do this. Here, I don't have to  
27 explain it, but let me tell you what our objective is. Our  
28

1 objective is to accomplish such and such, and this would be  
2 counter productive. Please join the team. Let's go."

3 That never took place.

4 SENATOR CRAVEN: All commanders are not that  
5 compassionate, Jesse, as you well know.

6 MR. ORTA: Yes, sir, that is correct.

7 SENATOR CRAVEN: But it just occurred to me, I don't  
8 think anybody can fault you for your enthusiasm and your obvious  
9 yeoman-like service when you've rendered for fellow veterans.  
10 And I think that's commendable.

11 But I think at times there are people who, serving with  
12 great enthusiasm under a particular head, whoever that may be,  
13 who get so far afield and so caught up in the work that they  
14 almost become, you know, the unit themselves, when in effect  
15 they're not. They're just a part of it.

16 And I am trying to separate the wheat from the chaff in  
17 your statement, which was very articulate. I just have a feeling  
18 that they felt that maybe you were getting a little too prominent  
19 in what you were doing, or that your enthusiasm as somewhat  
20 unbridled, and although well-intentioned, it may have been  
21 running in juxtaposition to policy of the Department.

22 MR. ORTA: Sir, that sentiment was never even near to  
23 articulated to me. My Director of the Department of Veteran  
24 Affairs encouraged me to continue doing. He knew, as do the  
25 veterans in the community also, that at every opportunity I gave  
26 every credit for every program to the administration, no matter  
27 who the administration happened to be for the last nine-plus  
28

1 years, to my bosses, the Department, the Director of Veteran  
2 Affairs, always without question except for about the last year  
3 when it was -- when I had to take vacation time to do programs  
4 for veterans while I'm working at the Department of Veteran  
5 Affairs.

6 It's true that there are different ways of doing this,  
7 but I have worked in a number of different departments. There  
8 have been very complimentary terms applied to my -- to my  
9 performance. I've never had a problem with good management who  
10 knows how to use resources.

11 The only time I've had a problem has been recently when  
12 people have not known how to utilize these resources, at which  
13 time I have on my own initiative come forward to say: This is  
14 what I do, and this is what I do well; this is how I do it; I  
15 will do it for you; I will do it for my boss. Because I don't  
16 really care who the boss is, I'm doing it for the troops.

17 SENATOR CRAVEN: Do you, in your presentation, do you  
18 have a feeling about Mr. Pierce which relates basically to a  
19 systemic thing as it relates to the Department and its work, or  
20 something that's ethnically based?

21 MR. ORTA: I've had feelings that perhaps it was  
22 ethnically based, especially when I saw some of the actions  
23 against a number of other Hispanic males.

24 I've had feelings that perhaps it was based upon  
25 veteran-ness. I work with so many others, that a veteran is a  
26 veteran, but I work with so many that I see some veterans feel  
27 that they are more, some who wear their eagles on their civilian  
28



1 shirts, some who are more or who are less, or who purport to be  
2 more when they are in fact less. We deal with all of them, sir.

3 SENATOR CRAVEN: Very good. Thank you very much.

4 CHAIRMAN ROBERTI: Thank you.

5 Any further opposition in the audience? Yes.

6 MR. WAHL: Senator Roberti and Senators.

7 First of all, the bailiff told me I could not record  
8 without your permission so I stopped recording.

9 Is it permitted?

10 CHAIRMAN ROBERTI: No, we do have a court reporter  
11 however, and she will get your testimony down.

12 MR. WAHL: Thank you.

13 Senator Roberti and Senators, my name is John Wahl,  
14 W-a-h-l. I have sent you a Mailgram. I don't know whether it's  
15 been distributed. I have Nancy Michel --

16 CHAIRMAN ROBERTI: I have my copy.

17 MR. WAHL: All right.

18 I am Chair of the Social Justice Commission of the San  
19 Francisco Council of Churches. I also am political Vice  
20 President of the Stonewall Gay Democratic Club. Like the  
21 nominee, I'm a native Californian. My grandfather was Lieutenant  
22 Governor when Hiram Johnson was Governor. His name was John  
23 Eshleman.

24 I am appalled at the language that I read yesterday  
25 morning. Insofar as I know, the leadership in the gay, lesbian  
26 and bisexual community in San Francisco and elsewhere in this  
27 state was not aware of this language, the language in the sworn  
28

1 declaration of Betty Reader, Deputy Director of the Department of  
2 Fair Employment and Housing.

3 CHAIRMAN ROBERTI: Do we have a copy of that  
4 declaration?

5 MS. MICHEL: Everyone has that copy.

6 MR. WAHL: Senator, I have a copy here.

7 CHAIRMAN ROBERTI: I have it in my packet somewhere.

8 MR. WAHL: In that declaration, Ms. Reader, who is not  
9 an insignificant state official, states that the nominee, when  
10 discussing the effect of A.B. 1 on the work of the Department of  
11 Fair Employment and Housing, said:

12 "I know how to handle that problem

13 -- just give me a submachine gun."

14 I was Harvey Milk's attorney, and I happened to be  
15 taking a deposition in the City Attorney's conference room on the  
16 day of the assassination. And I saw Harvey's body and blood on  
17 the floor of City Hall.

18 And if there is credible evidence that this statement  
19 was made, this Committee owes a solemn duty to the people of  
20 California to take sworn testimony from every person who was at  
21 the meeting where this statement was allegedly made.

22 I can tell you that my communities view this kind of  
23 thing in this light: We have had a series of murders in the  
24 Central Valley, and we have been trying for over six months to  
25 get a civil rights investigation by the federal Department of  
26 Justice. Senator Cranston wrote them over six months ago, and  
27 they have not responded.  
28



1           If we are going to be met by cabinet level officers  
2 stating that they will handle us with submachine guns, then I  
3 submit to you, Senators, perhaps we should start thinking about  
4 arming ourselves. And once that starts, you cannot put the genie  
5 back in the bottle.

6           We all know what goes on in Northern Ireland, and I'm  
7 not threatening. I'm prophesying. I tell you that our lives are  
8 worth something to us even if they are not to people who make  
9 that kind of fascistic statement. And we will defend them in any  
10 way we need to.

11           Now, we hope that we're defending them here. We ask you  
12 most respectfully, because we know the records of -- the civil  
13 rights records of Senator Petris and Senator Roberti and other  
14 members of the Senate. We ask you most respectfully to subpoena  
15 those people that allegedly heard that statement and find out  
16 whether they will say it to you under oath.

17           I understand that Mr. Mark Guerra, the Director of the  
18 Department of Fair Employment and Housing, has said the statement  
19 was made. Mr. William Garcia, with whom I spoke for the first  
20 time yesterday, has testified that the statement was made.

21           I am told that your staff has gone to -- has sent  
22 somebody out to talk to these people, and it's inconclusive as to  
23 whether the statement was made. That is no way to deal, most  
24 respectfully, Senator, with that kind of a statement.

25           We have the possibility of incitement to violence in  
26 that kind of a statement, and I have seen enough of it. I don't  
27 want to see it again. My life is dedicated to peaceful change,  
28

1 but I can tell you that there are people in all aspects of  
2 political activity that don't want to do it that way any more.  
3 And it's hard for many of us to deal with that.

4 Thank you very much.

5 CHAIRMAN ROBERTI: Thank you, Mr. Wahl. Please stay  
6 seated.

7 Senator Petris.

8 SENATOR PETRIS: First of all, I'm pleased to meet a  
9 grandson of the Lieutenant Governor of one of the great  
10 administrations of this state.

11 MR. WAHL: Thank you, sir.

12 SENATOR PETRIS: Albeit Republican, he's still --

13 MR. WAHL: He fought the Southern Pacific.

14 SENATOR PETRIS: He was one of the great governors in  
15 this century, I think, and he must have had a good man with him  
16 as Lieutenant Governor. At that time they ran together. It  
17 wasn't like it is now.

18 MR. WAHL: Yes.

19 SENATOR PETRIS: We're in a dilemma here. I think your  
20 recommendation is a good one, that we may wind up, you know,  
21 accepting it about bringing other people in.

22 But you know, the normal procedure is, when we get a  
23 conflict and allegations, we ask our staff to check them out. In  
24 most cases that's adequate. Not always, and sometimes we have  
25 lengthy hearings.

26 Now, you should know that two of the persons named in  
27 one of the affidavits that makes the allegation about the  
28

1 statement have sent us letters saying that such a statement was  
2 not made. One of them is Shirley Chilton, who was Secretary of  
3 the Agency, and the other one is Michael Kelly, a Deputy  
4 Director. Mr. Kelly, for example, says:

5 "It's been alleged that I was present  
6 at a meeting where derogatory statements  
7 were attributed to Mr. Pierce. This  
8 letter can be used as my statement  
9 refuting such an allegation."

10 He said he was included in the majority of meetings involving  
11 policy issues. He held the job for over two years, and at no  
12 time did Mr. Pierce make any derogatory comment.

13 So the denial not only goes to one specific meeting, but  
14 to all the meetings that he attended.

15 Now, I suppose we could bring him in and have him make a  
16 more complete statement, and ask him more questions, but you  
17 should know that what we have so far is a very direct and glaring  
18 contradiction among different persons who were supposed to have  
19 been present and heard or failed to hear what was said.

20 Human nature being what it is, most of us, I think,  
21 don't want to believe anybody made that kind of statement. But  
22 we have to sort out the facts and see what actually happened.

23 MR. WAHL: Most respectfully --

24 SENATOR PETRIS: You haven't had an opportunity, I don't  
25 suppose. You just found out about this recently.

26 MR. WAHL: I found out about this yesterday morning. I  
27 spent half of the day calling people in Sacramento and elsewhere,  
28



1 and I am convinced that there is enough color to the allegation  
2 that it should be the subject of your inquiry under oath.

3 I think that letters such as the one you read are,  
4 perhaps, much more easily given than sworn testimony, where you  
5 all have the opportunity to cross examine. And perhaps the  
6 testimony might be "I don't recall," rather than "it did not  
7 happen."

8 To me, the fact that three very respectable officials of  
9 the rank of Director, Deputy Director, and Mr. Garcia's rank  
10 would all say that this was said raises too great a question.  
11 When you're talking about this kind of statement, submachine gun,  
12 in a world where you see what's happening on the East Coast near  
13 Atlanta, no, Senators, I know you're very burdened, you're a busy  
14 Committee, but I most respectfully ask you to hold those  
15 hearings.

16 SENATOR PETRIS: Thank you.

17 CHAIRMAN ROBERTI: Please stay seated.

18 Senator Mello.

19 SENATOR MELLO: I think in reading this statement signed  
20 by Betty Reader, I'd point out what I consider a deficiency. It  
21 was done by, I guess, a law office.

22 The first one I find is, it says, "... in approximately  
23 December of 1983", well that allows for a variation of 31 days.

24 Secondly, a statement this strong, you would think that  
25 the attorney would have it notarized, or have witnesses sign and  
26 attest to it if it's going to be introduced here as evidence.

27

28

1 MR. WAHL: It's under penalty of perjury, Senator Mello.  
2 That means that it has the force of an affidavit under California  
3 law.

4 SENATOR MELLO: I'm not an attorney, but why do we have  
5 to sign before a notary to sell our property, or to buy it?

6 I mean, I just think you have a weak statement here  
7 because the date is not specific.

8 If they'd said, "At exactly 2:15 on the 3rd day of  
9 December, 1983, in the presence of the following," signed by  
10 witnesses and a notary, that to me would carry a lot more weight.

11 CHAIRMAN ROBERTI: If I might interject, on the one hand  
12 in fairness to the woman, Betty Reader, who wrote this statement  
13 to us, I suspect she was writing based on what she thought would  
14 be satisfactory for the Committee.

15 On the other hand, we have two statements, not under  
16 notarization but nevertheless, from reputable people who indicate  
17 those remarks were not made. I understand one of them, Mr.  
18 Kelly, the Deputy Director is here and would be willing to  
19 testify under oath to that effect.

20 The statement is serious enough in my mind as the worst  
21 aspect of vigilante-ism, and that's even too soft a word for it,  
22 that if they were made -- and I no way am saying that the  
23 statement was made -- that probably I would recommend that we  
24 come back in a week and give us a chance to have those people who  
25 were present at the meeting testify under oath. I hesitate to do  
26 that today because people haven't all been notified that that  
27 would be the case. And secondly, persons should be given some  
28 time to decide whether he or she chooses to do so.



1           So, that would be my recommendation. I'm certainly open  
2 to any other suggestions that the Committee would have, but the  
3 critical factor here isn't one of judgment; the critical factor  
4 here is one of fact as to whether or not, in my mind at least,  
5 this statement was made.

6           I'd like any input from the Committee whether they could  
7 help me out on this.

8           SENATOR MELLO: Mr. Chairman, I agree with you to the  
9 fact that I think it's very difficult to make a decision here  
10 today based on what we've heard. I think you have to put a lot  
11 of credibility on the statements.

12           Personally, the gentleman that came up representing the  
13 veterans, there's a very strong letter here from B.C. Collins,  
14 perhaps the most highly respected veteran in the state of  
15 California, supporting Mr. Pierce.

16           You have to look and digest all this information here.  
17 If this statement was said, it could be confirmed, certainly. No  
18 one should hold any position of public trust in government, or  
19 even in the private sector.

20           But I think that Mr. Pierce has the right to be innocent  
21 until proven guilty, and I think I'd like to follow the  
22 Chairman's advice and have people come up here under oath.

23           CHAIRMAN ROBERTI: I agree. This is unusual for us. We  
24 don't want to treat Mr. Pierce's confirmation in an unusual  
25 fashion; however, my staff, and more than one member of my staff,  
26 did try to detect as to whether the statement was made. The  
27 point came back as inconclusive. We got different opinions from  
28 different people.

1           It appears, as bad as it would be if the statement were  
2 made in the privacy of your own home, it was allegedly made at a  
3 public meeting, which I take it was an official meeting, if I'm  
4 not mistaken. We have to find that out, where, when and if made,  
5 under what circumstances.

6           I don't know how else to do it but to do it that way.  
7 We're trying to find out a point of fact.

8           That doesn't mean the other issues before us that have  
9 been brought up by Mr. Orta and Mr. Chavez on the other side  
10 aren't going to be taken into consideration, but my  
11 recommendation is we come back in one week, and those who were  
12 present at the meeting -- and if Ms. Reader's statement is  
13 complete, it indicates there were seven including the nominee --  
14 be given an opportunity to come here.

15           SENATOR PETRIS: We have other points to cover. Can we  
16 proceed?

17           CHAIRMAN ROBERTI: Yes, we can continue with the  
18 hearing.

19           If the Committee so desires, we'll confine next week's  
20 hearing to the specific allegation of the comment that was the  
21 subject of Ms. Reader's declaration.

22           MR. WAHL: Thank you, Senator.

23           CHAIRMAN ROBERTI: Thank you.

24           Any further opposition? Please come forward, the woman  
25 in uniform then the gentleman in the back.

26           MS. MANSUETI: Senator Roberti and other Senators, my  
27 name is Alice Mansueti, President of the American Mexican War  
28 Mothers Organization.

1           We are here today to protest the confirmation of Mr. Del  
2           Pierce as Director of the Motor Vehicles Department.

3           We previously wrote you a letter protesting it. We, I,  
4           believe, and other Hispanic groups have already shown you that  
5           this man's character and conduct towards members of minority  
6           groups can only be described as atrocious.

7           We urge you to vote no. Thank you.

8           Now, if I may, I would like to talk about our  
9           organization. It started in --

10          CHAIRMAN ROBERTI: Only in the sense of qualifying the  
11          statement that you've made.

12          MS. MANSUETI: I see, all right. Thank you. That's it,  
13          thank you.

14          CHAIRMAN ROBERTI: The gentleman with the glasses.

15          MR. GARCIA: Senator Roberti, Members of the Rules  
16          Committee, my name is Bill Garcia. My legal name is William  
17          Patrick Valentino Garcia.

18          I'm here representing the National G.I. Forum through  
19          Deanna Harwood, who would be here today; she was called away to  
20          Texas yesterday. She thought she might be able to make it back  
21          today. If she does make it back, she will be here to testify.

22          I am also representing Mr. Gil Ybarra, who is the  
23          statewide President for the American G.I. Forum.

24          The G.I. Forum is a national organization that is an  
25          advocate for the rights of veterans. We have memberships in that  
26          organization from the Second World War, the Korean War, and the  
27          Vietnam era, period.  
28



1           Also, I'm here on an individual basis. I am an employee  
2 of the Department of Veterans Affairs. I am not here in an  
3 official capacity. I have taken annual leave. I am here, as I  
4 mentioned, representing the organizations and on an individual  
5 basis.

6           I have personal knowledge of Mr. Adelbert Pierce. The  
7 information I am going to give you today was testified to by me  
8 at a hearing before the State Personnel Board.

9           If I could digress for just a second, the question was  
10 raised as to whether Mr. Pierce made the comment he did about  
11 gays. I assure you he did. I was there. I was there when Betty  
12 Reader signed the declaration. I testified to that, and I will  
13 testify to it again.

14          If Mr. Pierce can look me in the eye and say he did not  
15 make those statements, I would be mighty surprised.

16          Secondly, when Mr. Kelly says that Mr. Pierce did not  
17 make those statements, Mr. Kelly worked for Mr. Pierce. Mr.  
18 Kelly was promoted by Mr. Pierce to a position in General  
19 Services. Mr. Kelly is the same individual that came into  
20 another meeting that I was at; he spit some feathers or confetti  
21 paper out of his mouth. He was asked -- this was in the same  
22 group -- what is this? And he said, "This is how you can tell a  
23 homo has had oral sex with a chicken." Okay?

24          Where did you here that joke, Mr. Kelly? Mr. Pierce.

25          Now, these folks -- these are public meetings. These  
26 are high level officials. This is the attitude that prevailed in  
27 the agency of State and Consumer Services when I was the Chief  
28 Deputy Director.

1 I resigned my Chief Deputy position as Director because  
2 Mr. Adelbert Pierce and Mrs. Shirley Chilton were circumventing  
3 the Director of that Department. They were circumventing the  
4 Chief Deputy Director of that Department and interfering in the  
5 investigatory processes of that Department. I so testified. I  
6 included in those interferences the Bank of America, and I  
7 included in those statements the Bohemian Club.

8 They would customarily go to lower level staff and ask  
9 that their orders be carried out, leaving the Director and the  
10 Chief Deputy Director ignorant of the orders that they were  
11 given, and we would find out later and have to restate what the  
12 policy of the Department was through the Director.

13 I mentioned earlier that he did make the statements he  
14 did about the gay community when we were discussing AB 1. Mr.  
15 Guerra informed Mr. Brooks from the Sacramento Bee, and I have a  
16 copy -- may I pass this around, please -- I have a package here  
17 of the statements that Mr. Brooks took from Mr. Guerra, where Mr.  
18 Guerra said, yes, he did make those statements and it was  
19 unfortunate; they were careless remarks.

20 I attempted three times to resign my Chief Deputy  
21 position at the Department of Fair Employment and Housing because  
22 I did not want to work in an environment that I found myself  
23 placed in. Mr. Pierce told me that I could not go back to the  
24 Department of Veterans Affairs, although I had legal return  
25 rights back to that Department, because the administration wanted  
26 me there, and he wanted me there.

27  
28



1           And I told him, okay, I would stay a couple more months.  
2           And he said, "Don't give me time lines."

3           In desperation I finally decided I would resign. I  
4           formally submitted my written resignation. At that time Mr.  
5           Pierce told me I would be sorry. This was in approximately June  
6           of 1984.

7           In December of 1985, Mr. Mendez was terminated as the  
8           Director of the Department of Veterans Affairs. I put my hat in  
9           the arena to be considered for the directorship.

10          In March of that year, Mr. Pierce came down to the  
11          Department, instructed the Chief Deputy Director, Mr. David  
12          Matsler, to terminate my CEA. Mr. Matsler told Mr. Pierce that  
13          this was not a good time to terminate his CEA; he's a candidate  
14          for the directorship; why don't we wait.

15          Mr. Pierce said no, we'll do it now. This takes care of  
16          his candidacy.

17          By virtue of doing this, he violated my constitutional  
18          rights as well as my civil rights.

19          There has been a lot of pressure applied recently on the  
20          organizations, on the individuals that have written to you that  
21          have said they would like to come forth and testify. Much  
22          pressure has been applied. There has been some wavering, some  
23          waffling on the part of some. In fact, we were told that if some  
24          of the organizations showed up here today, they were scheduled to  
25          meet with the Governor in February, that they could forget it.

26          CHAIRMAN ROBERTI: Which organizations?  
27  
28

1 MR. GARCIA: This was MAPA, LULAC, the G. I. Forum.  
2 They had a meeting scheduled with Steve Merksemer, the Governor,  
3 in February, the first week in February of this year. That if  
4 they showed up here to testify against this man, he might not  
5 make it through this Committee, but if he didn't, he would get a  
6 better job. I don't know how he would do that, but he would get  
7 a better job, and the doors to the Governor's Office would be  
8 closed to these community groups.

9 That's the kind of a climate that we have in the state.

10 SENATOR PETRIS: Who told you that?

11 MR. GARCIA: Who told me?

12 SENATOR PETRIS: Or the group. Who put out that word?

13 MR. GARCIA: I was told that by Bea Molina who met with  
14 the community relations officer of the Governor's Office, who  
15 also is the head of MAPA. I was told that by Mr. Gil Ybarra, who  
16 is the state chairman of the G. I. Forum.

17 SENATOR PETRIS: And he got it from the community  
18 relations officer?

19 MR. GARCIA: It came from the Governor's Office.

20 SENATOR PETRIS: Do you know which individual in that  
21 office?

22 MR. GARCIA: I would have to say that it would have come  
23 from a lady by the name of Jamie Bailey.

24 CHAIRMAN ROBERTI: I would suggest that, not that we  
25 don't value your testimony, Mr. Garcia, but I think it would be  
26 best if maybe next week that Ms. Molina and Mr. Ybarra be invited  
27 if they choose to testify, and Ms. Bailey as well, as to whether  
28 that happened.

1 I guess the Governor, if this is the case, I guess the  
2 Governor is certainly free to make appointments as he chooses to  
3 do so, as I would value my right to make appointments. However,  
4 we also have to in some way value the right of people to come  
5 freely to testify before the State Senate, State Senate  
6 Committees, and if that statement were made, it certainly would  
7 mean that we're not getting the full value of individual  
8 testimony if retribution of some sort is feared, if that's the  
9 case.

10 I'm not saying you're not repeating something as you  
11 understand it to be, but it does strike me a little as hearsay,  
12 so I would like to invite them to indicate if that's the case.

13 MR. GARCIA: Fine.

14 It's very, very difficult for individuals to get up to  
15 come here to begin with, particularly if they work for the State  
16 of California or have to go out and get contracts with the State  
17 of California and know that reprisal and retribution will and can  
18 take place.

19 You know, your august body, your esteemed body, passed a  
20 bill called the whistle blower's bill, law, which I gave you a  
21 copy of in that package. I can assure you that Bill Garcia will  
22 be harassed and intimidated in the future as a result of being  
23 here today.

24 It's quite all right. I'll take the risk because I  
25 think that these items have to come out. This is a very  
26 important position that's being considered, and you need the best  
27 possible person in that job.  
28



1 By the way, I'm a registered Republican, okay? I have  
2 been for years. In fact, Senator Craven has written letters on  
3 my behalf.

4 I have 30 years of government experience, responsible  
5 government experience. At this point, my professional  
6 credibility, my reputation has been shattered as a result of Mr.  
7 Adelbert Pierce.

8 Mr. Adelbert Pierce, Mrs. Shirley Chilton, at my hearing  
9 when I made these charges, were given the opportunity to refute  
10 those charges. They refused at that time to come forward. So my  
11 testimony stands uncontroverted. They were given an opportunity.  
12 The ALJ hearing the case said, "Where is Mr. Pierce? Where is  
13 Mrs. Chilton? This man is making some serious charges." The  
14 A.G.'s representative said, "They will not be here." They had  
15 ample opportunity. In fact, the hearing was carried over to give  
16 them opportunity to be there to refute the charges. They never  
17 showed up.

18 In summary, my resignation from DFEH, my termination  
19 from running the Cal Vet program, was not because of job  
20 performance, but rather because I spoke out against abuses and  
21 because I believed I was an acceptable candidate for an appointed  
22 position.

23 As I mentioned earlier, my professional reputation has  
24 been damaged. My future in state government is at a standstill.  
25 I'll never go any further than I am right now. I may possibly go  
26 down hill.

1           Much like Terry McGinnes, I don't know if Terry McGinnes  
2 showed up here today, but she was -- similarly had a complaint  
3 with the State Personnel Board; she won.

4           I paid a lot of money out in attorney's fees to get  
5 where I am today, and I'll be paying out a lot more before this  
6 is over.

7           Mr. Pierce has the reputation of instructing those he  
8 supervises to deny all complaints by employees because 80 percent  
9 will not have the resources or the perseverance to follow through  
10 with their complaints, and that of the remaining 20 percent, only  
11 10 percent will prevail and that is not a bad won-loss ratio for  
12 the administration.

13           This information has been given to our organization.  
14 That is something that should be checked over at the Department  
15 of Motor Vehicles, and it should be checked in the Agency.  
16 People have told our organization that this is the attitude that  
17 this man has: turn them all down. If they have the resources,  
18 the perseverance, 20 will make it through, and maybe 10 percent  
19 will win.

20           In closing, I can only hope that my speaking out will  
21 help prevent this sort of adverse action from happening to  
22 others.

23           I'll be happy to answer any questions that you have at  
24 this time.

25           CHAIRMAN ROBERTI: Senator Mello.

26           SENATOR MELLO: You refer to the same meeting as  
27 December of 1983, and I would think that a VIP like yourself  
28



1 would carry a daily calendar and you know exactly where you are  
2 and what time and everything.

3 Can you tell us exactly what date that was and what time  
4 of day?

5 MR. GARCIA: I could tell you -- I could narrow it down  
6 to the middle of the month. I was gone from the Department of  
7 Fair Employment and Housing --

8 SENATOR MELLO: You're testifying against this person  
9 here. What I'm trying to document is what day did it happen,  
10 what time, so that we can put together this whole --

11 MR. GARCIA: I'm sure if you take --

12 SENATOR MELLO: You no doubt had a secretary who  
13 scheduled your appointments for the day, where you're going to  
14 be?

15 MR. GARCIA: I left the Department of Fair Employment  
16 and Housing when this came up. Mr. Guerra -- I'm sure it'll be  
17 on the record as to when we went over to the Agency to discuss  
18 AB 1. It'll be on the record over there.

19 SENATOR MELLO: I would think that two people using this  
20 statement would have a better idea when it occurred.

21 MR. GARCIA: Sir, I cannot tell you the exact day but I  
22 can tell you it did happen, and I think that's more important  
23 than the date that it happened.

24 SENATOR MELLO: Again, I'm not an attorney, and I've  
25 only been in court a few times, but I think if you were to say  
26 this happened in December, the Judge would dismiss the case and  
27 you'd be out.  
28

1 MR. GARCIA: I doubt that, sir, because he did make the  
2 statement and I testified to it under oath.

3 SENATOR MELLO: What I'm saying is, they have to  
4 document it.

5 CHAIRMAN ROBERTI: We will try for next week to ask the  
6 witnesses to document the day, if the meeting did indeed occur.  
7 I'm just phrasing everything in a subjunctive mood here.

8 Senator Petris.

9 SENATOR PETRIS: Have you seen Betty Reader's statement?

10 MR. GARCIA: Pardon me, sir?

11 SENATOR PETRIS: Have you seen her statement that was  
12 submitted to us that names the persons who were present at that  
13 December meeting. She says, "others present". It doesn't  
14 purport to cover everybody, but others present were: Shirley  
15 Chilton, Mark Guerra, Mike Vader, William Garcia and Mike Kelly.

16 Do you remember all those being present at that meeting?

17 MR. GARCIA: I know that Shirley Chilton was there for  
18 sure; Mark Guerra was there; I was there and Betty Reader was  
19 there. Mr. Pierce and I believe Mr. Kelly was behind him when he  
20 came in. He came into the meeting late, not really to  
21 participate because he made the statement, quite a bit of  
22 controversy over his statement, he left.

23 I'm not certain that Mr. Kelly would have heard the  
24 statement, but Mrs. Chilton would have. Now, Mrs. Chilton has  
25 her own problem having to do with this type of statement. You  
26 have literature from the Japanese American Citizens League where  
27 she was making jokes about Japanese Americans in public meetings  
28 and had to apologize to individuals for doing that.

1           This is the kind of people that are going to be  
2     testifying on behalf of Mr. Pierce.

3           SENATOR PETRIS: Were there others present that aren't  
4     listed here?

5           MR. GARCIA: No, sir. I know for certain that I was  
6     there; Mr. Guerra was there; Mrs. Reader was there; and Mrs.  
7     Chilton was there; and Mr. Pierce was there to make the comment.

8           SENATOR PETRIS: Thank you.

9           MR. GARCIA: I was there when Mrs. Reader signed that  
10    document.

11          CHAIRMAN ROBERTI: We will invite Mrs. Reader to  
12    testify. The statement she has made was not made for us. It was  
13    made for another deposition. That doesn't mean it doesn't have  
14    value, but our preference would be that any deposition made be  
15    made for the Committee if at all possible.

16          Thank you very much, Mr. Garcia, unless there are more  
17    questions. Thank you.

18          Mr. Kelly, I take it, would like to come forward since  
19    his name was referred to.

20          MR. KELLY: Mr. Chairman, Members, Michael Kelly.

21          I just would like to make some statements relative to  
22    some comments that were made about my own personal integrity  
23    involved in this issue. Mr. Garcia has made some very serious  
24    allegations and I want to clarify the record from my standpoint  
25    as it relates to Mr. Pierce.

26          The statement regarding his comment of machine-gunning  
27    gays, I do recall the meeting. For Mr. Mello, it was in the  
28



1 afternoon. It was early afternoon, between 2 and 2:30, and I was  
2 present from the beginning. I don't know the date, because when  
3 you were talking, and I do keep a calendar of all the events I go  
4 to going back two years. So if necessary, I can tell you when  
5 the meeting took place.

6 And I sat in the meeting for the whole period of time,  
7 and at no point in time did he make such a statement. And the  
8 individuals there were myself, Mr. Pierce, Shirley Chilton, Betty  
9 Reader, Bill Garcia and Mark Guerra.

10 In reference to his comment that I may be -- or the  
11 implication being that I worked for Mr. Pierce and I may tell  
12 something other than the truth, I take great exception to that  
13 because that's one of the few things we come into the world with  
14 is our personal integrity, and I intend to go out with mine  
15 intact.

16 As Mr. Pierce can tell you, you know, the amount of  
17 money they pay me doesn't -- to me, it gives me no reason to lie.  
18 I've picked pears and tomatoes, and driven a truck, and I'll do  
19 it again rather than lie on something like this.

20 Now, I did not work -- Mr. Pierce was my supervisor, but  
21 the appointing authority of my position was Shirley Chilton. My  
22 current position I got on my own and have worked for another  
23 individual, Mr. Tony Anthony. I interviewed for that on my own.  
24 As a matter of fact, Mr. Pierce asked me if I'd stay and work  
25 with him longer.

26 So the comment that he had some control over my -- my  
27 position at the Agency as well as my promotion is totally  
28 incorrect.

1 And I know that the majority of the discussion will take  
2 place next week under oath, and I'll be willing to say and answer  
3 any questions you have regarding that issue.

4 CHAIRMAN ROBERTI: Thank you, Mr. Kelly.

5 Any questions?

6 SENATOR PETRIS: You said you were there about 2:30.  
7 Were you there during the whole time --

8 MR. KELLY: Yes.

9 SENATOR PETRIS: -- that Pierce was there?

10 MR. KELLY: Yes.

11 SENATOR PETRIS: There wasn't any overlapping?

12 MR. KELLY: No.

13 SENATOR PETRIS: Did you come in with him?

14 MR. KELLY: My office was right next door to his. The  
15 meeting was in his office. I brought my materials to the office,  
16 his office, and sat down.

17 SENATOR PETRIS: Was there any discussion of AB 1 at  
18 all?

19 MR. KELLY: There was some discussion of AB 1 in the  
20 extent it was one of the major issues that the Department was  
21 considering at the time.

22 SENATOR PETRIS: Was it a lengthy discussion?

23 MR. KELLY: I would say that maybe a half hour. When  
24 you have meetings, you discuss many things in terms of what is  
25 going on in the Department, so it was a meeting discussing  
26 policy, budget, and a lot of different things. Certainly it was  
27 discussed in that regard.  
28



1 SENATOR PETRIS: So AB 1 was just one of several items?

2 MR. KELLY: Right.

3 SENATOR PETRIS: Did Mr. Pierce make any statement at  
4 all regarding AB 1? Did he take a pro or con position, or any  
5 comment?

6 MR. KELLY: Comment only to the extent that he was  
7 soliciting input from the Department in terms of, you know,  
8 ideas, comments, what's your stance, give me the rationale and  
9 the reason. And it reminded me of another issue that relates to  
10 some of the testimony you've heard about the things that took  
11 place in the Department of Veterans Affairs, and his role in  
12 that.

13 As I indicated in my letter, budgets and policy was my  
14 basic responsibility, and I was involved in the majority of those  
15 meetings. And as a result of those meetings, the intent was to  
16 get the Department on track in terms of their budget and policy.  
17 And all the decisions and the emphasis that we were placing were  
18 in that regard. So to the extent that they were doing things  
19 that they weren't budgeted to do, were outside of the policy,  
20 then possibly that's where the rub is.

21 But from the perspective of what we were there to do, it  
22 was just to review the budget, policy, provide the guidelines in  
23 which this administration was operating.

24 SENATOR PETRIS: Were there other meetings in December  
25 on the same general subject with that group?

26 MR. KELLY: With that group on AB 1 specifically?

27 SENATOR PETRIS: Yes. Well, let me rephrase that.  
28

1 Did this same group meet together more than once in  
2 December?

3 MR. KELLY: I couldn't say that same group in total. It  
4 depended on what the issue was and whether or not all the  
5 participants were --

6 SENATOR PETRIS: What about the issues you've just  
7 mentioned, the budget and policy and AB 1?

8 MR. KELLY: Well, I can check my records, but I'm sure,  
9 you know, that was on a weekly basis. We did have meetings with  
10 the various departments involving issues that were going on at  
11 the time.

12 SENATOR PETRIS: Was this one of those regular weekly  
13 meetings?

14 MR. KELLY: When you say "weekly", they call and say:  
15 We have an issue we'd like to discuss. We schedule the time then  
16 they come in and discuss it.

17 So all I'm saying is that usually a week didn't go by  
18 that someone wasn't calling and asking to be, you know --

19 SENATOR PETRIS: When you said "weekly", I thought it  
20 might have been a regular meeting.

21 MR. KELLY: No, it's just: Hey, we have an issue we'd  
22 like to discuss. Well, schedule a time and we'll come on in, and  
23 it just so happened to be that it generally occurred on a weekly  
24 basis.

25 SENATOR PETRIS: Okay. Now, was AB 1 discussed at any  
26 other meetings than the one you have in mind in December?

27 MR. KELLY: Not to my knowledge.  
28

1           SENATOR PETRIS: This was the only time it came up?

2           MR. KELLY: Not with this group.

3           SENATOR PETRIS: Thank you.

4           CHAIRMAN ROBERTI: Thank you very much, Mr. Kelly.

5           Are there any other witnesses? Yes, please come  
6 forward.

7           MR. SANDERS: Good afternoon, Chairman Roberti, Vice  
8 Chairman Craven, and other Senators.

9           My name is Steve Sanders. I am representing and a  
10 member of the California Union of Safety Employees, or CAUSE.  
11 This includes over 5,000 public safety employees that work in  
12 various state departments throughout California.

13           The reason why I'm here is not to either oppose or back  
14 the confirmation of Mr. Pierce, but to bring to your attention  
15 some serious concerns that the safety employees have regarding  
16 some of the things that have happened within the Department of  
17 Motor Vehicles over the past couple of years.

18           Included among my fellow members, and the reasons why  
19 I'm here before you this afternoon, are the license and  
20 registration examiners for the Department of Motor Vehicles and  
21 the Motor Vehicle Investigators.

22           Most of us have some understanding of the jobs that  
23 these two classifications of state employees perform. The  
24 driver's license examiners, in short, are the ones who road test  
25 all driver's license applicants in the state of California and  
26 who make the determination whether or not they are qualified to  
27 have a driver's license in this state.  
28



1           The Motor Vehicle Investigators, on the other hand, are  
2 sworn investigators who have the power to collect evidence,  
3 subpoena witnesses, make arrests, and generally conduct the  
4 business of criminal investigations within that Department. They  
5 are responsible for investigating complaints against the 16,000  
6 auto dealers in this state and over 3,000 auto dismantlers.  
7 Their investigations uncover illegal chop shops, which sell auto  
8 parts from stolen cars, international fake I.D. rings,  
9 unscrupulous auto dealers, fake advertising, and so forth.

10           Those investigators and examiners working within the DMV  
11 and who belong to CAUSE have become increasingly alarmed over the  
12 last couple of years as to their inability to do an adequate job  
13 in protecting the public. The reasons for those concerns I have  
14 reduced to three major examples.

15           The first problem deals with the driver's license  
16 examiners' personnel. Because of cutbacks over the last few  
17 years in the Department of Motor Vehicles, they have allowed the  
18 members of this classification to drop from approximately 500  
19 members to 375.

20           With an ever increasing state population and resulting  
21 increase in DMV workload, many DMV supervisors who are unable to  
22 hire are now instructing these examiners to shorten the road test  
23 time in order to deal with that workload. More to the point,  
24 they are requiring the LREs or examiners to spend, instead of  
25 what CAUSE considers the bare minimum amount of time, that is 30  
26 minutes for each road test, down to 20 minutes.

27  
28

1           As any responsible California driver will attest, what  
2 the Department of Motor Vehicles saves in personnel costs will be  
3 more than made up in death and carnage on the state's highways.  
4 You cannot put people who are not qualified to drive out on the  
5 road, and 20 minutes is not enough time to determine whether or  
6 not they are a safe driver.

7           The second issues involves a decision made by the  
8 Department of Motor Vehicles on September 2nd, 1986, through a  
9 directive from DMV, Chief Mike Vega, who serves directly under  
10 Mr. Pierce, that approximately 50 investigators be removed from  
11 29 field offices to central locations throughout the state.

12           Now, it should be noted that these physical offices  
13 themselves are not closed down. There's no cost savings there.  
14 But only the investigators removed from them to locations miles  
15 from their geographic areas in which they conduct their  
16 investigations. Investigators, in short, have been removed from  
17 the scenes of the crime where they work.

18           In the past, consumers and victims were able to drop by,  
19 call or see an investigator immediately after discovering that  
20 they had a complaint or were a victim. Quite often victims would  
21 approach an office uncertain or unsure whether they even had  
22 grounds for a complaint against a dealer. An investigator who  
23 would be at the site could immediately sift through the complaint  
24 and assist the consumer. If there was a violation, he would be  
25 able to ascertain that, and more importantly, if there wasn't a  
26 violation, he could tell the consumer that also.



1           Investigators, prior to this reorganization scheme, were  
2 generally able to jump into their state vehicles and immediately  
3 visit the scene of a complaint, and this took place directly in  
4 areas where there's high concentrations of dealerships,  
5 dismantlers, or related businesses.

6           Now an investigator must spend extra hours on the road  
7 commuting. Then, when he or she gets to the centralized office,  
8 must go all the way back to the area they're assigned to  
9 investigate, which of course takes time. Investigations are, of  
10 necessity, cut short in order to return the state vehicle at the  
11 end of the day back to the office away from this general area of  
12 investigation.

13           This kind of commuting back and forth on California's  
14 crowded freeways is being repeated in 29 locations throughout the  
15 state with CAUSE receiving complaints from its members in the  
16 sprawling counties of Los Angeles, Santa Clara, Contra Costa,  
17 Alameda, and San Diego.

18           I ask you, as the custodians for the people of the State  
19 of California, where the cost savings come in this kind of  
20 arrangement?

21           Our investigators can see none. In fact, what they do  
22 see is a waste of time and monies, and the use of state  
23 automobiles in senseless commutes from centralized offices to  
24 assigned field territories.

25           Imagine the inefficiency of an investigator that once  
26 served the Westminster area, we would say, in Los Angeles, or  
27 Escondido in San Diego, now being required to drive all the way  
28

1 to Compton or downtown San Diego first to pick up a state car,  
2 then back to the field to investigate a complaint, and then leave  
3 halfway through the day to return his state vehicle before he's  
4 caught in rush hour traffic.

5 When is there time to investigate, is what we have been  
6 asked by our investigators, and what is the shape of an  
7 investigator after battling freeway traffic in Los Angeles, San  
8 Diego, Contra Costa or Alameda? And remember, there are 29 such  
9 satellite offices that have had investigators removed. If there  
10 is a cost savings in this, it certainly is not obvious in gas,  
11 wear and tear on the vehicles, or investigators, or the morale of  
12 those employees.

13 The final issue that CAUSE wishes to place before you is  
14 the creation of a new compliance representative and consumer  
15 assistance classification or unit within DMV. Under the guise of  
16 assisting consumers and reducing the burden of investigators, DMV  
17 has created two whole new bureaucracies. A new staff  
18 communications of nonsworn -- classification of nonsworn,  
19 noninvestigator compliance representative in the field, and a new  
20 state unit in Sacramento to receive all the consumer complaints.

21 Sworn investigators are persons with police powers.  
22 Such investigators can subpoena and collect evidence. They are  
23 able to arrest. But more important, their years of detective  
24 experience, investigation and police experience provides them  
25 with insights and knowledge unavailable outside in the real world  
26 of hard experience. Trained investigators can and often do  
27 recognize fraud or crime with the first blush of a complaint.  
28

1 They have worked the 16,000 auto dealers in the state of  
2 California and the 3,000 dismantlers. They can recognize  
3 patterns and have a backlogged and mental file of knowledge  
4 that's unavailable to a newly trained compliance investigator or  
5 inspector.

6 Because this new class is not supposed to go into the  
7 field, one wonders how many potentially good investigations will  
8 be ruined by an inexperienced telephone call to do a preliminary  
9 compliance check when they receive a complaint.

10 Creating a new class of paper pushers, setting up a unit  
11 in Sacramento, hundreds of miles away from many investigative  
12 field areas, creates a new level of government that consumers  
13 must wade through prior to getting attention. When a consumer's  
14 been taken by a ripoff artist, or a stolen vehicle is on it's way  
15 to a chop shop dismantler, there is no time to file a complaint  
16 in Sacramento or wait for an untrained compliance inspector to  
17 look into the details. By the time the various levels of sorting  
18 and clearance are hurdled, the one-year statute of limitations  
19 for a misdemeanor could expire.

20 Before the reorganization scheme, a bewildered client or  
21 citizen victim would often visit a field office immediately after  
22 discovering that they may have been the victim of fraud,  
23 deception. And within minutes after receiving the complaint, an  
24 investigator, often trained to see a pattern or recognize a  
25 dealer frequently accused of fraudulent or criminal actions,  
26 could jump into his vehicle, go directly to the scene of the  
27 complaint, and either work things out or, using his police  
28



1 powers, collect evidence, examine, and generally investigate, and  
2 if necessary, make an arrest.

3         Imagine one example, if you will, a newly married couple  
4 in Westminster driving their newly purchased 1987 pickup truck to  
5 their home only to discover that they've really got a 1986. A  
6 trained investigator familiar with individuals in this geographic  
7 area might recognize a bait and switch tactic immediately and be  
8 able to almost immediately investigate with the cooperation of  
9 local law enforcement.

10         But now, under this new system which DMV is proposing,  
11 the newly married couple would go to their local DMV office in  
12 Westminster, which has no investigator, and fill out a complaint  
13 which is reviewed by an unsworn, inexperienced compliance or  
14 complaint representative. The complaint is then forwarded to  
15 Sacramento after that happens, and there these untrained  
16 inspectors will determine whether or not there is any criminal or  
17 fraud activity, then send it back to Compton, where the  
18 investigator will get ahold of it, an investigator in midmorning  
19 that drives all the way out from Westminster to meet with the  
20 couple, or that couple will have to drive all the way downtown to  
21 Compton, again because there's no investigator now in the  
22 Westminster office. In any event, if the investigator ever makes  
23 it to Westminster to talk to the car dealer, it's highly likely  
24 there is no case because the unscrupulous dealer has already been  
25 tipped off by a telephone call.

26         In the meantime, 20 new cases could be originating from  
27 the same bait and switch artist, and new complaints will  
28

1 similarly need to be processed, some dropping in the dead files,  
2 others grinding through the channels. By this time, our newly  
3 weds in Westminster have appeared before Channel 6 or Channel X,  
4 Call for Action, and have received help from that particular  
5 area, and they are now convinced that the state doesn't care, and  
6 that white collar crime goes unchecked.

7 The DMV has suggested that their new unit --

8 SENATOR MELLO: Sir, if I could interrupt you for just a  
9 minute.

10 MR. SANDERS: Sure.

11 SENATOR MELLO: As a strong believer in the First  
12 Amendment, I'm trying to understand how this relates to  
13 confirmation. Everything you're saying might be related to a  
14 policy matter, administrative matter, but I'm looking for things  
15 of personal reference to this gentleman, and to see whether or  
16 not we should confirm him or not.

17 MR. SANDERS: Okay. I can take care of that real fast,  
18 Senator Mello.

19 It is Mr. Pierce who is the one that's implementing  
20 these kinds of changes within DMV under the guise of cost  
21 cutting, when indeed what's happening here is that the protection  
22 to the public is no longer being provided. And that's why we're  
23 here, and that's why we're bringing this into this forum so that  
24 you can understand the problems that we have as those people who  
25 are charged with enforcing --

26 SENATOR MELLO: Are you recommending he not be  
27 confirmed?  
28



1 MR. SANDERS: Pardon?

2 SENATOR MELLO: Are you recommending that he not be  
3 confirmed?

4 MR. SANDERS: Well, let me say this. We have discussed  
5 these matters with Mr. Pierce on several occasions in the recent  
6 past, and Mr. Pierce has expressed a desire to take care of some  
7 of these problems. Other problems he tells us he won't take care  
8 of.

9 What we're doing here is to see that he does what he  
10 said he is going to do, and to bring these problems to your  
11 attention as the custodians of the people, to make sure that  
12 public safety is not endangered under the guise of cost cutting.

13 SENATOR MELLO: So then you're really not opposing his  
14 confirmation. You're here to get him on the record and get  
15 yourself on the record.

16 MR. SANDERS: That's right, sir; that's what we're  
17 doing.

18 SENATOR MELLO: Thank you.

19 MR. SANDERS: Mr. Pierce, in his defense, certainly has  
20 an impressive background as an investigator in the field of  
21 narcotics.

22 He's expressed to CAUSE, as was previously mentioned,  
23 that his intention was well-motivated to take the burden of  
24 paperwork off the backs of the DMV investigators. However, the  
25 investigative nature of auto fraud and dealer misrepresentation,  
26 dismantling and so forth requires immediacy. Trained  
27 investigators can and often do recognize crime or fraud with the  
28

1 first contact with the complainant. In fact, most of the major  
2 cases involving rings or other networks of criminals have come of  
3 the attention of the DMV investigators because of a simple  
4 consumer complaint.

5 We would hope that Mr. Pierce takes into consideration  
6 the many questions prior to moving ahead with these new-type  
7 management programs, and we have submitted several pertinent  
8 questions to his office for his managers to use in their  
9 calculation. In fact, a copy of those questions I would like to  
10 be sure Mr. Pierce has right now for his future consideration.

11 In summary, CAUSE would like to commend Mr. Pierce for  
12 agreeing in past discussions to fill the existing slots in  
13 driver's license examiners and investigative units. We believe  
14 this action will go a long way to reducing the case loads and  
15 increasing safety on the streets and highways.

16 But if the consumers of the state are to be protected  
17 from devious and unscrupulous practices, if the people that we  
18 represent are going to be able to carry out the mission that they  
19 have and the assignment that they have as state employees and  
20 peace officers, then we are going to urge the Department to do  
21 three things: one, to reopen those 29 satellite offices so the  
22 public can have contact with an experienced investigator; two,  
23 halt the creation of this new layer of bureaucracy; three, create  
24 instead a small audit unit with not more than two field  
25 investigators who would routinely review the kinds and numbers of  
26 investigative complaints, cases that are being opened, so that  
27 they are not frivolous and that they are to the point of public  
28 safety.

1           With that, I would like to encourage Mr. Pierce to look  
2 at those questions, indeed, all the questions that we've put  
3 here, to see whether or not DMV is going to remain a viable force  
4 in the state of California for public safety.

5           Thank you.

6           CHAIRMAN ROBERTI: Thank you very much.

7           Any questions? Is there anyone else in the audience who  
8 wishes to testify?

9           Seeing none, Mr. Pierce, you may rebut.

10          MR. PIERCE: Perhaps we could start with the pertinent  
11 issues that deal with the Department of Motor Vehicles and  
12 certainly the testimony of the representative from CAUSE.

13          I am on record in several forums as being very much in  
14 support of increasing the integrity of our driver's license  
15 examining program. I feel that the arbitrarily setting of time  
16 periods to examine motorists in California is inappropriate, and  
17 that we should give a test that is long enough to evaluate the  
18 person's skills and determine if they should operate a vehicle on  
19 our streets. We cannot compromise the integrity of driver  
20 licensing to a bureaucratic set of time periods.

21          To that end, we're filling the vacancies. We're looking  
22 at -- there are some people in this world who don't need to be  
23 behind the wheel for 30 minutes to be tested. There are others  
24 that do need more than 30 minutes. And we are constantly telling  
25 our managers that the integrity of their program comes foremost  
26 and not necessarily the performance standard of 20 minutes or 30  
27 minutes. And in fact, the Department will be redirecting  
28



1 resources into the driver testing area to ensure the integrity of  
2 that program.

3 SENATOR PETRIS: Do you mind interruptions while you're  
4 going along?

5 MR. PIERCE: No, I welcome them, Senator.

6 SENATOR PETRIS: Are you saying that that is not the  
7 practice, to limit these tests to 20 minutes?

8 MR. PIERCE: They have standards, Senator.

9 SENATOR PETRIS: There's an emphatic statement here that  
10 it's been reduced from 30 to 20. You're saying --

11 MR. PIERCE: And I have no first-hand knowledge of the  
12 fact. There has been -- you know, we operate 160 offices in  
13 California, and some of our managers react very -- very much to  
14 public concern. In fact, as late as this morning at 11:30, I  
15 spoke to 30 of our managers regarding -- the basic thing is,  
16 don't tell us what we want to hear; tell us how it actually is  
17 out there. And if there is definitely a need for additional  
18 resources, I would be the first to champion the cause to the  
19 administration for additional resources for driver testing.

20 SENATOR PETRIS: Who sets the time? Does the local  
21 manager do it in each --

22 MR. PIERCE: Well, there's some policies that are set.  
23 The 30-minute policy is, I believe, the policy that's set in  
24 Sacramento.

25 But I don't think time is -- it's an average standard,  
26 but I think that there are instances where more time would be --  
27 be required and less time would not be -- you know, would serve  
28

1 no purpose, other than to just ride around the block with Al  
2 Unser, you know, and get his autograph. I mean, there are  
3 certain people who can drive a car, and that has to be  
4 recognized.

5 We should test for competence and not try to determine  
6 competence by a time span.

7 With regard to the area of the investigators and their  
8 concern about consumer protection, I spent three years at State  
9 and Consumer Services Agency and spent a great deal of time  
10 dealing with consumers who received goods or services from the  
11 1.8 million people that are licensed by the Department of  
12 Consumer Affairs.

13 I believe that there's no other reason why we license  
14 certain occupations and certain businesses than to provide  
15 consumer protection and to ensure that they're getting the goods  
16 and services that they deserve.

17 And I would do nothing in our Department of Motor  
18 Vehicles to jeopardize the ability of the State to respond to the  
19 accusations against its licensees. And in many areas since I've  
20 arrived at the Department of Motor Vehicles we have increased the  
21 enforcement efforts.

22 Some of the decisions being made regarding relocation of  
23 resources deal with the management of the resources, and  
24 certainly do not reflect the Department's desire to decrease the  
25 emphasis on consumer protection.

26 With regard to the additional personnel that are being  
27 put into the field, this is an expansion of a program that was in  
28



1 existence when I arrived at the Department of Motor Vehicles.  
2 These people are put out there to ensure that we're able to  
3 process the licenses of individuals and not for consumer  
4 protection or enforcement. We are trying to relieve our  
5 investigators of the more clerical administrative functions that  
6 don't require their peace officer powers and don't their ability  
7 and training, so that their efforts can be focused on consumer  
8 protection and the integrity of our Departmental programs.

9 If anything, our Department is committed to increasing  
10 the resources in the division of investigation and occupational  
11 licensing, and we have in fact redirected positions and money to  
12 that program over the time period that I've been in the  
13 Department.

14 SENATOR PETRIS: I'm looking for something more  
15 specific.

16 Now, the witness said that you took field investigators,  
17 or investigators rather, out of 29 field offices and put them in  
18 more central locations.

19 Now the complaint is that rather than help the consumer,  
20 that removes them a step, or five or ten, farther away from the  
21 consumer.

22 I'd like you to explain why that isn't so. Apparently  
23 you believe that moving them from Point A to B helps the consumer  
24 more. Can you explain why? How they're more efficient or more  
25 helpful?

26 For example, a specific point made is that the  
27 investigator out there has had a lot of experience and is trained  
28

1 to spot certain kinds of fraud committed by licensees immediately  
2 on the first contact with a consumer. But if it goes from the  
3 field without an investigator into a central office and back,  
4 something gets lost in the traffic there.

5 MR. PIERCE: Well, Senator, I would say that there are a  
6 certain number of complaints, such as missing jacks, that can be  
7 resolved very easily by a telephone call from our Department.  
8 There are other complaints that tend to be more civil in nature  
9 and a dispute regarding a contractual arrangement between a  
10 dealership and an individual in the purchase of a vehicle that  
11 our Department has no jurisdiction.

12 There are other complaints that may in fact require not  
13 only rapid response by investigators, but more than one  
14 investigator. I'm -- my concern, and I recognize and have  
15 committed to the Union that I will look at the closure of a  
16 number of these offices. Closing them for closure's sake is not  
17 necessarily always in the best interests of the consumer nor the  
18 state of California.

19 But just as a general observation, that the fact that  
20 investigators are in or not in a field office and available to  
21 the consumer as they come in, if the consumer comes in for a  
22 complaint, and there's one investigator in that field office, and  
23 the investigator goes out on that complaint, then any subsequent  
24 consumer that comes in that field office will not have an  
25 investigator present to answer his complaint anyway.

26 It's not our intent to create a bureaucracy, but it's  
27 our intent to maximize the use of our investigators in  
28

1 investigating the complaints and set priorities based on the  
2 needs and the severity of the complaint.

3 Under the current system, the resident investigator has  
4 been setting his own priorities.

5 SENATOR PETRIS: How does moving him to a central office  
6 improve the service?

7 MR. PIERCE: It doesn't necessarily in all cases,  
8 Senator, and that's what I've asked the division to reevaluate.  
9 Upon meeting with the representatives of the Union last week, and  
10 then the lengthy discussions by the division chief who comes back  
11 to DMV after being there for many, many years and being away in  
12 another Department, he's reassessing his decision to centralize  
13 all the investigators.

14 I think that there'll be some -- I won't say  
15 accommodation, but there's been certain instances that maybe the  
16 centralization isn't totally warranted and it may adversely  
17 impact our ability to respond.

18 Okay, if we could move back, there's been a great deal  
19 of discussion here today regarding a statement that has been  
20 attributed to me.

21 I deny that I made that statement, and as has been  
22 presented to you today by someone who was at that meeting, and as  
23 you have received from other individuals, there is certainly some  
24 corroboration, if you want to use the legal term, for that  
25 denial.

26 But further from that, and I think more important, that  
27 statement, I regret that it would ever be attributed to me  
28



1 because it is so far removed from my feeling regarding fair  
2 treatment of individuals and discrimination of any kind that I --  
3 I share with the individual that testified so eloquently that  
4 that is not something that someone in public service should  
5 think, promote, or adopt.

6 I spent many, many years enforcing the laws of this  
7 state and the federal government, many years. And I believe in  
8 the law. I certainly do not believe in violence of any kind.  
9 And I believe in equal treatment of everyone.

10 I've spent a great deal of time over my career in state  
11 government ensuring that there is fair treatment, ensuring that  
12 when people are wrong and they're not treated fairly, that it's  
13 investigated, and that if there is a substance to the allegation,  
14 that corrective action is taken.

15 And I have spent a great deal of time on affirmative  
16 action and equal opportunity. Since I've been with the  
17 Department of Motor Vehicles, I believe it's been confirmed by  
18 the staff of the Rules Committee, I have not discouraged  
19 complaints and discrimination, but have moved swiftly to  
20 determine the facts and take the appropriate action. I have not  
21 discouraged grievances, but have worked diligently with those  
22 involved in the grievance to bring them to resolution.

23 I have a 20-year record that is before this Committee  
24 and has been investigated by this Committee of fair treatment, of  
25 commitment to the State, commitment to the responsibilities that  
26 I have been charged with, and I've carried out those  
27 responsibilities in a fair and impartial manner.  
28

1           And I regret deeply that this statement has ever been  
2 attributed to me as I have not made it.

3           With regard to my actions concerning veterans and  
4 veterans' organizations, it's unfortunate that much has been  
5 attributed to me in my role as Undersecretary of State and  
6 Consumer Services, but I'd like to place the record straight.

7           I am a California veteran and have been a California  
8 veteran. I was drafted out of state service during the Vietnam  
9 era. I am currently a member of the Reserves. I'm proud of my  
10 military service; I'm proud of veterans. I think the service  
11 that the state provides for veterans should be the most  
12 beneficial possible.

13           While I was at the Agency, I worked diligently on issues  
14 such as the second veteran's home in which we went out and  
15 actively solicited the input of veterans' organizations and  
16 veterans' groups to come forward and work with the Department in  
17 doing a feasibility study for a second veterans' home in Southern  
18 California.

19           In terms of the Cal Vet loan program, which is the  
20 premiere program and certainly one of the outstanding programs in  
21 the United States, I believe that the veterans are well-served in  
22 that program. I support that program and would support any  
23 improvements that that program could endure to make it a more  
24 viable and more accessible funding for the veterans in California  
25 using their benefits to purchase a home.

26           And everything that we did at the Agency and did in  
27 concert with the management of the Department was to improve the  
28



1 service level to California veterans so that they could receive  
2 their benefits in a timely and expedited manner.

3 Now, there's been some statements made here today  
4 regarding personnel action that's been taken or attributed to me.

5 I believe that the case Mr. Garcia has mentioned here,  
6 the facts do not support some of the allegations that were made,  
7 and I'd like to maybe set a little of the record straight, but  
8 I'm not sure how far -- well, let me start, and let me say this.

9 Mr. Garcia raised the issue that I objected to his  
10 returning to the Department of Veterans Affairs after serving as  
11 an exempt appointment of the Governor as Chief Deputy of Fair  
12 Employment and Housing.

13 I in fact did not object, but I contacted the then  
14 Director of Veterans Affairs and advised him of Mr. Garcia's  
15 desire to return to the Department and asked him to hold the  
16 position vacant so Mr. Garcia could return to his previous  
17 position as the division chief of Cal Vet.

18 With regard to a number of issues of violation of  
19 constitutional rights and other things, without any more  
20 specifics I'm afraid I'm at a lost to understand how to respond  
21 to those.

22 I come before you with a record of 20 years of state  
23 service. I've made a lot of decisions. I've always made them in  
24 a fair manner. I've been placed in situations where difficult  
25 decisions had to be made for the sake of a program. Some of  
26 these decisions were not universally approved by all parties  
27 concerned, but I assure you that they were made based on the  
28

1 facts that were before me and in a fair manner, taking into  
2 consideration the best interests of the state and the government  
3 that we all represent.

4 SENATOR MELLO: Mr. Chairman.

5 CHAIRMAN ROBERTI: Senator Mello.

6 SENATOR MELLO: A question, the gentleman's name, was  
7 that Orta? He made some, I think, very strong statements  
8 alleging that you made, you or this other person in charge, made  
9 anti-veteran statements.

10 Would you like to comment on his statements --

11 MR. PIERCE: Yes.

12 SENATOR MELLO: -- or allegations that he made against  
13 you?

14 MR. PIERCE: Senator, I'm very pro-veteran. And Mr.  
15 Orta's activities on behalf of the Department were applauded by  
16 me on a number of occasions. Mr. Orta has done an excellent job  
17 of organizing dedications, and Veterans Day acknowledgements, and  
18 parades, and certainly one of the outstanding achievements was  
19 the 100-year anniversary of the veterans' home which I not only  
20 supported but attended. And I'm proud that I've been able to  
21 make some commitment to California veterans.

22 I have never ever been anti-veterans' activities.  
23 Again, the only thing that I can say is that there are limited  
24 resources, and we can only support so many functions given the  
25 resources that we have available.

26 SENATOR MELLO: I don't know whether I stated the  
27 question right or whether you tried to respond around it.  
28

1 I'm really more interested in knowing whether or not the  
2 statements he made attributed to you as to stating, as I recall,  
3 we're doing too much for veterans, and he'd have to quit doing  
4 what he's doing. In other words, make him be less aggressive  
5 than he has been.

6 MR. PIERCE: Those -- the things that have been alleged  
7 to be attributed to me are not true. I did not make those  
8 statements to Ms. Bundy, nor did I make those statements to Dr.  
9 Herrera.

10 I had, for the most part, limited dealings with the  
11 Department regarding policy issues, and certainly some of the  
12 things that he's alleging that are taking place within the  
13 Department have long been since I've been there or had anything  
14 to do with the Department.

15 SENATOR MELLO: You deny all the allegations he made  
16 against you?

17 MR. PIERCE: Yes, sir.

18 CHAIRMAN ROBERTI: Senator Petris.

19 SENATOR PETRIS: How about being out to get him?

20 MR. PIERCE: No, Senator, not in the least. In fact, I  
21 always assumed that we had a very cordial and good working  
22 relationship. Mr. Orta, I believe, at one time even was a member  
23 of the Agency staff prior to my arrival.

24 SENATOR PETRIS: What about after?

25 MR. PIERCE: None whatsoever. In fact, at one point in  
26 time, I supported him to be the -- supported is probably not -- I  
27 asked a question regarding whether or not he would be a person to  
28 continue with the Cal Vet Guard program.



1           SENATOR PETRIS: Which program?

2           MR. PIERCE: The Guard program, which is the loans to  
3 the California National Guard members.

4           SENATOR PETRIS: How about his concern, somewhat related  
5 to Senator Mello's question, of getting out of the advocacy role  
6 and paying attention to programs?

7           MR. PIERCE: There is a memo that I believe you are in  
8 receipt of -- I at least had an opportunity to review it -- where  
9 I make an observation to the then Director Mendez. That was  
10 regarding a briefing in which the Department was going to brief  
11 the Governor on his programs. And when we received the original  
12 outline, rather than focusing on the programs which the  
13 Department was carrying out and how they were going to better  
14 serve the veterans with those programs, it focused on new areas.  
15 And my remarks back to him then were rather than being an  
16 advocate in this forum, you should focus on your programs and the  
17 direction your programs should take or are taking, because it was  
18 a report to the Governor on what his administration was doing.

19           SENATOR PETRIS: Is there a distinction between program  
20 and advocacy?

21           MR. PIERCE: Yes, there is.

22           SENATOR PETRIS: What is it?

23           MR. PIERCE: I'm charged with a program of licensing  
24 cars and licensing drivers, and carrying out that program the  
25 best I possibly can as administrator in state government.

26           I'm not charged with representing the motorists'  
27 interests, the car dealers' interests, the people we license.  
28 But I'm charged with carrying out the responsibilities.

1           And I make recommendations to the administration  
2 regarding issues that surround the programs I administer.

3           SENATOR PETRIS: How about the Veterans Administration?  
4 A lot of us viewed the Veterans Administration as being set up to  
5 help the veteran. It seems to me more difficult to draw such a  
6 clear line between licensing a motorist and helping a veteran who  
7 has problems.

8           I don't know what advocacy means there. I don't know  
9 whether it means helping the veteran as the veteran fits into the  
10 program of the Department, or what. I need a little more  
11 information.

12           MR. PIERCE: Well, I think that the programs that they  
13 have, veterans' services, the Cal Vet loan program and the home,  
14 are all services that they provide to the veterans. And  
15 certainly we have to ensure that our services and our programs  
16 coincide with the veterans' needs. And as new veterans' issues  
17 come up, such as the homeless issue, that those have to be  
18 addressed also, as do the job training for veterans. And each of  
19 those has to be taken into the context of what we're able to  
20 deliver given the resources we have available.

21           I think that it's essential that avenues of  
22 communication be established and maintained between the providers  
23 of service and those people needing services so that that can be  
24 brought to the attention of the administration.

25           SENATOR PETRIS: Well, I see in that distinction echoes  
26 of what Mrs. Chilton was under fire for for a long time when she  
27 sat where you're sitting.

28



1           The quarrel that I had with Mrs. Chilton was that they  
2 were putting a round peg in a square hole or vice-versa, and that  
3 her entire career had been devoted to fighting government and  
4 reducing government, and getting it off our backs, and limiting  
5 the role of the various agencies, and particularly the ones that  
6 were licensing businesses.

7           Now she was climbing aboard the other side of the table  
8 as a protector of the consumer. And I saw a very inherent  
9 conflict in that, and I didn't think it was fair to appoint her  
10 to that job.

11           Now, the criticism that we received about her after she  
12 got on the job, and conferences she had had around the state, was  
13 telling business that the government is no longer going to be an  
14 advocate; the government's going to mind it's own business. And  
15 that totally contrary to the statutes that she was appointed to  
16 enforce.

17           That's why this distinction between advocacy and program  
18 kind of caught my ear. You see what I mean?

19           MR. PIERCE: Yes, Senator.

20           SENATOR PETRIS: Some of us look at a lot of these  
21 agencies under the banner of consumer protection as being  
22 advocates, because there ain't nobody else out there to do it.  
23 And if you get automobile dealers, for example, that are  
24 defrauding the public consistently; if you get automobile repair  
25 people that are jamming it to the public, and it's done quite  
26 often, often enough for all of us to have know about an  
27 experience of somebody or maybe have one ourselves, you know.  
28

1 The story's been told over and over; I'm sure you've encountered  
2 it. You know, you drive a car into a place, and it's just been  
3 repaired, right up to date. There's nothing wrong with it, and  
4 they tell you that you need \$800 worth of work on it. That's  
5 fraud.

6 Now, what's the role of government in that situation and  
7 the consumer protection thing? Is the government an advocate for  
8 that consumer, or is the government just carrying out program,  
9 which is to file papers when they come in about a complaint?

10 You know, I think the line can be drawn in different  
11 places depending on how you view the mission and how the statute  
12 describes the mission.

13 MR. PIERCE: I think, you know, taking that issue, and  
14 it's one that I appreciate an opportunity to discuss, making the  
15 consumer whole is very important, almost paramount. Then  
16 ensuring that there isn't a reoccurrence of that, either through  
17 administrative or criminal action, is certainly warranted. It's  
18 certainly something that the Department's going to focus on and  
19 continue. In some cases where it's warranted, taking that person  
20 out of the marketplace so that they can't harm other consumers.

21 As I said earlier, Senator, the reason we're licensing  
22 people is for consumer protection. And protecting the consumer  
23 first is our paramount goal in ensuring that the licensee is  
24 abiding by the law.

25 I make decisions each day regarding licensing matters.  
26 I don't take them lightly. I suspend licenses prior to hearings,  
27 they are temporary suspensions, when there's a strong possibility  
28

1 that -- where there's a continual pattern of offenses against  
2 consumers, and by allowing that person to continue in license  
3 status until we have the hearing is going to promote more  
4 consumer harm. I weigh those very, very carefully, and I assure  
5 you, Senator, that I have no qualms about going after our  
6 licensees that fail to abide by the law. And if they're harming  
7 consumers, I assure you, they will be brought before the  
8 Department and brought before the criminal courts.

9 I think if you will review some -- at least a letter  
10 received by the Independent Automobile Dealers, which represents  
11 the used car dealers in California, I think they describe me as  
12 fair. I'm tough, and I'm fair.

13 But I think the consumer recognizes, when he sees up on  
14 the wall a license issued by the State of California, that  
15 there's something behind that license, and there's some assurance  
16 that he's going to be protected when entering into a transaction  
17 involving that dealership.

18 SENATOR PETRIS: Well, I guess it's a matter of  
19 interpreting what that is. Some people would call what you just  
20 said advocacy and some wouldn't, so we can take that up again  
21 later.

22 Thank you.

23 CHAIRMAN ROBERTI: Anything further?

24 MR. PIERCE: Well, Senator, nothing more than that I  
25 appreciate the opportunity to come before you, and I think this  
26 is a correct forum to judge my qualifications. And certainly  
27 other forums have not been afforded -- I have not been afforded  
28 other appropriate forums.



1 I'm sure that the Members of the Committee will evaluate  
2 my qualifications and what's been said here today and take the  
3 appropriate action that's warranted.

4 CHAIRMAN ROBERTI: Thank you very much for your  
5 testimony.

6 We will put the question over for one week when we will  
7 resume the hearing.

8 MR. PIERCE: Thank you, Senator.

9 (Thereupon this portion of the Senate  
10 Rules Committee hearing was terminated  
11 at approximately 4:35 P.M.)

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CERTIFICATE OF SHORTHAND REPORTER

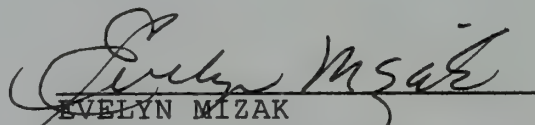
I, EVELYN MIZAK, a Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing Senate Rules Committee hearing was reported in shorthand by me, Evelyn Mizak, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in the outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this

23<sup>rd</sup> day of January, 1987.

  
EVELYN MIZAK  
Shorthand Reporter



















